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| (1) *[Developer] / [RP]*  AND  (2) *[ESCo]* |
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| |  | | --- | | HEAT NETWORKS INVESTMENT PROJECT  DRAFT: [REGISTERED PROVIDER]/[LANDLORD VOID] SUPPLY AGREEMENT | |
| Version Control  |  |  |  |  | | --- | --- | --- | --- | | **Version number** | **Date of issue** | **Comment** | **Author** | | 1 | March 2019 | First draft template Registered Provider/Landlord Supply Agreement | Lux Nova Partners | | 2 | 31.07.19 | Draft for focused consultation | Lux Nova Partners | | 3 | 16.10.19 | Marked up following responses to consultation meeting on 19.09.19 | Lux Nova Partners |   ***GUIDANCE NOTE***  *This [Registered Provider]/ [Landlord Void] Supply Agreement is not relevant to every district heating scheme.*  *However, it is intended to be used by Registered Providers which are Registered Providers to social tenants (as defined under the Housing and Regeneration Act 2008), or Landlords who are landlords of multiple Residential and/or Commercial Units, whose tenants (or leaseholders) will be supplied with heat from a district heating scheme and the commercial arrangement with ESCo is such that the Landlords are responsible for Voids prior to first lettings/ occupation and in some circumstances, during in-between tenancies.*  *How this Agreement might fit into a project structuring is illustrated in the following diagram:*    *This Agreement does not cover the connection of the relevant Building/ Block/ Plot Development to the Energy System or the Adoption of any parts of the Energy System (see relevant Connection and Adoption Agreements, which should be used in conjunction with this Agreement where such activities are required to be undertaken).*  *Drafting relating solely to:*   1. *Plot Developers/ Developers who are Landlords is detailed in blue* 2. *Registered Providers is detailed in green*   *Under the Registered Provider Supply Agreement:*   1. *the Registered Provider is responsible for ensuring that all social tenant units take heat from the district heating scheme;* 2. *ESCo is obliged to make heat available to such tenants under relevant Residential Heat Supply Agreements;* 3. *during “Void” periods (i.e. initial and in-between tenancies), the Registered Provider is required to pay for Variable and Standing Charges and during tenancies, the Registered Provider is required to pay a proportion of the tenant’s Standing Charges, equivalent to the costs of operating and maintaining the district heating equipment within the building serving the Residential Unit;* 4. *it has been assumed that (i) all of the heat distribution network up to the Building’s’/Block’s connection point is operated and maintained by ESCo and (ii) the Registered Provider, e.g., owns and/or is responsible for replacement of the Secondary Distribution Network within the relevant Building/ Block. The Parties ought to discuss whether ESCo will be notionally responsible for interruptions to heat supply caused by faults occurring in the Building/Block heating system and/or any Unit Installation – in which case the landlord/Registered Provider will indemnify ESCo for these costs. Parties to also consider how repairs and replacements to the Building/Block heating system and/or any Unit Installations will be addressed, and whether the Landlord will want to appoint ESCo to do this.*   *Under the Landlord Void Supply Agreement:*   1. *the Landlord is responsible for ensuring that all Residential and Commercial Units within the relevant Block of which it is landlord, take heat from the district heating scheme;* 2. *ESCo is obliged to make heat available to such Residential and Commercial Units under relevant Residential Heat Supply Agreements and Commercial Unit Heat Supply Agreements;* 3. *prior to first lettings of Units, the Landlord is responsible for payment of Charges (i.e. covering the cost of the Void period). Optionality has been included for the Landlord to also be responsible for in-between tenancy Void periods;* 4. *it has been assumed that all of the units served will either be all residential or a mix of residential and commercial. If all commercial, additional amends will be required to remove residential specific drafting;* 5. *it has been assumed that (i) all of the heat distribution network up to the Building’s/Block’s connection point is owned, operated and maintained by ESCo and (ii) the Landlord, eg. owns and/or is responsible for replacement of the Secondary Distribution Network (or “Building Heating System”) within the relevant Building/ Block. The Parties ought to discuss whether ESCo will be notionally responsible for interruptions to heat supply caused by faults occurring in the Building Heating System and/or any Unit Installation – in which case the Landlord will indemnify ESCo for these costs. Parties to also consider how repairs and replacements to the Building Heating System and/or any Unit Installations will be addressed, and whether the Landlord will want to appoint ESCo to do this.*   *The structuring assumption and risk allocation underlying this Agreement is far from the only possible or valid structure and, even adopting the structure described above, there could be a wide range of variant approaches to aspects of the commercial structuring and contracting matrix. Therefore, it is likely that this template Agreement will serve only as a starting point for drafting of an agreement that will need to be tailored to the particular characteristics of a given district heating scheme.*  *THIS DRAFT IS RELEASED FOR THE PURPOSES OF A CONSULTATION ONLY*  *Neither the content of the above guidance, nor the drafting of this template document, is intended to constitute or to replace the need for expert legal advice, which should be sought on every district heating project. No liability is accepted for use of this template document. All liabilities are excluded to the fullest extent permitted by law.* |
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**THIS AGREEMENT** is dated [DATE]

**Parties**

1. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Landlord);** and
2. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is [ ] (**ESCo**).

**Recitals**

1. The [DESCRIPTION OF THE DEVELOPMENT] (the “**Development”)** is [a development project being delivered by [ ] (the “**Developer**”)[[1]](#footnote-2) which includes delivery of [ ] new homes, [ ] commercial units and [ ][[2]](#footnote-3)]/ [an existing development comprising [ ] homes, [ ] commercial units and [ ]] in the [ LOCATION ] area, [ LOCATION]
2. The Landlord is a [Registered Provider]/[[Plot] Developer] and is the primary Landlord of Customers occupying Residential Units [occupied by social tenants, in respect of which the Registered Provider provides certain services pursuant to the Housing and Regeneration Act 2008]] [and Commercial Units] within a Block(s) on the Development[[3]](#footnote-4).
3. This [Registered Provider]/[[Landlord Void] Supply Agreement sets out the terms on which:
   1. ESCo shall keep the Residential Units [and Commercial Units] Connected to ESCo’s Energy System;
   2. ESCo shall provide a Heat Supply to Customers pursuant to agreed form Customer Supply Agreements and to certain standards.
4. Subject to the terms of this Agreement and the other Project Agreements, the [Registered Provider]/[Landlord] shall grant to ESCo (or procure the grant to ESCo) leases, licences, wayleaves or easements (as relevant) where elements of the Energy System will be operated and maintained to enable ESCo to fulfil its obligations under this Agreement.

**Agreed Terms**

1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

* 1. Definitions:

**Affiliate** means, in relation to any person, any subsidiary, any holding company or any subsidiary of such holding company, and holding company and subsidiary shall have the meaning given to them in section 1159 of the Companies Act 2006.

**Authorisations:** means an authorisation, consent, permission, approval, resolution, licence, exemption, filing, notarisation, permit, licence, agreement or registration, (whether statutory, regulatory, contractual or otherwise) including (without limitation), relating to Planning Permissions, Building Control and all Environmental Laws.

**Back-bill:** means a ‘catch-up’ Energy Bill to reconcile Charges made for the Heat Supply.

**Base Rate:** means the borrowing base rate published by the Bank of England from time to time.

**[Between Tenancy Void Period** means the time (in days) commencing on the earlier (as relevant) of the date that: (a) a tenant leaves a Relevant Unit; (b) terminates their Customer Supply Agreement; and (c) [Registered Provider]/[Landlord] takes possession of a Relevant Unit by way of surrender, a court order or otherwise and ending on the date a new tenant enters into a new Customer Supply Agreement in respect of the same Unit][[4]](#footnote-5).

**Billing Period:** the period of [1 month]

**Block:** means a block of Residential Units [and Commercial Units] which are subject to this Agreement and in respect of which the [Registered Provider]/[Landlord] is Landlord.

**Block Connection Point:** means the outlet valves on the secondary circuit of the [ ] at which point the Block and the Building Heat System are connected directly to the Energy System, as identified on the Connection Point Drawings.

**Building Heating System:** means the heat distribution network internal to the Block:

* + - 1. from the Landlord’s side of the Connection Point to [SPECIFY];
      2. including: [SPECIFY]
      3. excluding: any component party of the Energy System or any part of any Unit Installation.

**Business Day**: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Change of Tenancy Details:** has the meaning given under Clause 7.4 (Customer Transfer of Responsibilities to Tenants).

**Charges:** means:

* 1. the Heat Charges;
  2. any Reconnection Charges
  3. any Disconnection Charges;
  4. any Debt Processing Charges.

**CIU:** means a customer interface unit which contains a display and associated ancillary equipment, wiring and apparatus connected to a Heat Meter in a Residential Unit, showing consumption, payment, debt and consumption history.

**Commencement Date**: means the date of this Agreement.

**[Commercial Comparator:** means the comparator set out under Schedule 3Part 2 (Commercial Charges)]

**[Commercial Unit Heat Supply Agreement:** means an agreement between a Commercial Unit Customer and ESCo for a Heat Supply in the form set out under Schedule 2 (Customer Supply Agreements)[[5]](#footnote-6)].

**[Commercial Unit Customer:** means a customer taking a Heat Supply in a Commercial Unit pursuant to a Commercial Unit Heat Supply Agreement].

**[Commercial Unit:** means a self‑contained unit for occupation forming part of the Block which is not a Residential Unit, as identified under Schedule 1Part 3 (Commercial Units) or as notified by the Landlord pursuant to Clause 4.1 (Application).]

**[Commercial Unit Heat Exchanger:** means a unit comprising heat exchanger, pump and associated input and output valves and controls used for the transfer of heat from the Energy System to a Commercial Unit].

**Common Parts:** means those parts of the Block which are common to more than one Residential Unit [and/or Commercial Unit] and which are supplied by a separate Heat Meter. *[Drafting Note: Parties may want to consider Common Parts usage deemed to be the difference between the building/Block meter reading and the sum of all metered supply to the Units within the building/Block. This would account for heat losses as well as intentional use within the Common Parts.]*

**Comparator:** means the methodology and supporting documentation for demonstrating that the Heat Charges applicable at that time produces a total annual cost which remains competitive against [ ][[6]](#footnote-7) as set out under Schedule 3 (Customer Charges).

**Confidential Information**: any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a Party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.

**Connection Point Drawings:** mean the drawings set out under Schedule 7 (Connection Point Drawings) identifying [the relevant Block Connection Point][Points of Connection].

**Contract Year**: a period of 12 months (or such shorter period if this Agreement is terminated earlier), commencing on the Commencement Date.

**Customer:** means a Residential Customer, [a Commercial Unit Customer] and the [Registered Provider]/[Landlord], as the context requires.

**Customer Supply Agreement(s):** means a Residential Heat Supply Agreement [or a Commercial Unit Heat Supply Agreement].

**Data Protection Legislation:** means all legislation and regulatory requirements in force from time to time relating to the protection and handling of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation (*(EU) 2016/679*) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).

**Data Protection Protocol:** means the data protection processes and duties set out in Schedule 4 (Data Processing) as the same may by updated in writing from time to time in accordance with Clause 10.3 (Data Processing).

**De-energisation/ De-Energise** means the movement of any switch or closing of any stop valve or any other step as a result of which no Heat Supply can flow from the Energy System through the relevant Block Connection Point to the Unit’s Installation

**Debt Processing Charge:** means a charge made to cover the costs of ESCo recovering any overdue Charges.

**Developer:** has the meaning given in Recital (A).

**Development:** has the meaning given in Recital (A).

**Disconnection Charge:** meansthe charge for disconnecting a Relevant Unit from receiving the Heat Supply as set out under Schedule 3 (Customer Charges).

**Dispute**: any dispute under this Agreement.

**Dispute Resolution Procedure**: the dispute resolution procedure set out in Clause 17.1 (Dispute Resolution Procedure).

**Due Date**: has the meaning give in Clause 7.3.1 (Charging and invoicing).

**Emergency** means any event where ESCo reasonably considers it necessary to take urgent steps to remedy any matter for reasons of health and safety or events requiring the intervention of the police or emergency services or water leaks that may cause significant material damage whether or not this is as a result of ESCo’s failure to comply with any of its obligations under this Agreement.

**Energisation/ Energise:** means the movement of any switch or opening of any stop valve or any other step which enables the Heat Supply to flow from the Energy System to the Block Connection Point.

**Energy Bill:** a statement or invoice issued at regular intervals to the Customer in accordance with Clause 7 (Payment and charges).

**Energy System**: means the district heating network, energy plant, equipment and machinery, used by ESCo to provide the Heat Supply to the relevant Block Connection Point.

**ESCo:** means the entity identified as such in the recitals to this Agreement.

**ESCo Cap on Liability** means the cap on liability specified in Clause 14 (Limitations on Liability).

**ESCo Cure Period:** means a reasonable time limit agreed between the Parties in accordance with Clause 17.1 (Notice of Defective Performance) within which the [Registered Provider]/[Landlord] must take action to remedy a breach.

**ESCo Property Damage** means any damage to or destruction of ESCo’s property or any third party property at the Block caused by the [Registered Provider]/[Landlord] or a party invited onto the Block by the [Registered Provider]/[Landlord] (but which is not ESCo) whilst carrying out works at the Block or performing any of the Registered Provider]/[Landlord]’s obligations, or exercising any of the Registered Provider]/[Landlord]’s rights under this Agreement, but excluding any Indirect Loss.

**ESCo Related Parties:**  means ESCo's employees, subcontractors, agents and Affiliates.

**ESCo Termination Grounds:** means:

* 1. the [Registered Provider]/[Landlord] is in material or persistent breach of its obligations which substantially prevents ESCo from performing its obligations or exercising its rights under this Agreement or a Customer Supply Agreement and such breach is notified by ESCo to the [Registered Provider]/[Landlord] and:-
     1. where the breach is capable of remedy:-

the [Registered Provider]/[Landlord] has failed to put forward a reasonable programme setting out how it proposes to remedy the breach (the “[**Registered Provider]/[Landlord] Cure Programme**”) or commence remedying the breaches specified in such notification within the [Registered Provider]/[Landlord] Cure Period; or

the [Registered Provider]/[Landlord] has put forward a [Registered Provider]/[Landlord] Cure Programme but has materially failed to remedy the breaches specified in such notification in accordance with the [Registered Provider]/[Landlord] Cure Period; and/or

* + 1. where the breach is not capable of remedy:-

it would be unreasonable to expect ESCo to accept financial compensation for such default (where applicable); and

such breach has given ESCo reasonable grounds to believe that the [Registered Provider]/[Landlord] is incapable of properly fulfilling its obligations pursuant to this Agreement; and/or

* 1. ESCo has suspended or disconnected the Heat Supply to the Block, as set out in Clause 7.5 (Failure to make payment) and ESCo has sent the [Registered Provider]/[Landlord] a further final reminder letter and, after [10 Business Days][[7]](#footnote-8), the [Registered Provider]/[Landlord] still has not paid the overdue Heat Charges; and/or
  2. an Insolvency Event occurs in relation to the [Registered Provider]/[Landlord]; and/or
  3. the aggregate liability of the [Registered Provider]/[Landlord] to ESCo arising out of or in connection with this Agreement and with respect to any and all claims and costs arising out of or under this Agreement or arising out of the performance or non‑performance of any other obligation of the [Registered Provider]/[Landlord] in connection with this Agreement, including any non‑contractual obligations arising from this Agreement, exceeds the [Registered Provider]/[Landlord] Cap on Liability.

**ESCo Termination Payment:** means:

1. [ ].[[8]](#footnote-9)

**ESCo Warning Notice** has the meaning given under Clause 17.2 (Right to Service Warning Notice).

**Expiry Date** means [ ]**[[9]](#footnote-10)**.

**Failure Event:**  means those events set out in Schedule 5 (Service Standards).

**Final Termination Notice:** means a notice served pursuant to Clause 17.3.1 (Timing of Service of Final Termination Notice).

**[FOI:** means the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act]**[[10]](#footnote-11)**.

**Force Majeure Event** means the occurrence after the date of this Agreement of any event beyond the reasonable control of a Party which cannot reasonably be avoided or overcome by that Party and which is not attributable to the acts or omissions of that Party or its Related Party, including (but not limited to):-

(a) war, hostilities (whether war be declared or not), invasions, act of foreign enemies, civil war, sabotage, piracy;

(b) rebellion, terrorism, revolution, insurrection, military or usurped power, riot, civil commotion or disorder;

(c) ionising radiation or contamination by radio‑activity, except as may be attributable to ESCo and/or and ESCo Related Party or the [Registered Provider]/[Landlord] and/or a [Registered Provider]/[Landlord] Related Party is the source or cause of such radiation or contamination;

(d) chemical or biological contamination of the Energy System and/or the communal energy supply from any of the events referred to in paragraph (a)above;

(e) contamination, the presence of which was caused by the release, discharge, spillage or deposit of that contamination by a third party;

(f) operation of the forces of nature such as earthquake, hurricane, lightning, typhoon or volcanic activity;

(g) explosions, fires or destruction of plant, machinery or premises;

(h) acts, inactions, defaults or restraint of a statutory undertaking, government or public authority, whether lawful or unlawful, except for:-

* + 1. acts for which the relevant Party has assumed the risk by virtue of other provisions of this Agreement;
    2. acts for which the relevant Party should reasonably have anticipated and mitigated; and
    3. any lack of Authorisation, licence or approval necessary for the performance of this Agreement which is to be issued by any public authority unless ESCo or the [Registered Provider]/[Landlord] (as applicable) has failed to apply for any such Authorisation in accordance with Good Industry Practice;

(i) strikes, lockouts or labour disputes generally affecting the construction industry or energy generation industry or any supply chain related to or, service or supply to such industries, or a significant sector of any of them;

(j) the discovery of fossils, antiquities or unexploded ordnance at the Block; and

(k) failure or interruption of supply of utilities serving the Energy System;

1. which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement provided that it shall not include events or circumstances which delay or prevent the ability of the Relevant Party to make any payments when due under this Agreement.

**Good Industry Practice**: those practices, methods, specifications and standards which comply with Law and that a competent and experienced contractor in the district heating industry would be expected to use and/or adopt in relation to the provision of comparable works and services which are substantially similar to the works and/or services (as applicable) or the relevant part of them to be delivered pursuant to this Agreement, having regard to factors such as the nature and size of the Parties, the Service Levels, the Term, the pricing structure and any other relevant factors.

**Heat Charges:** means:

* 1. the Standing Charge;
  2. the Variable Charge;
  3. [the Residual Charge];
  4. [the Void Charge].

**Heat Meter:** means the metering equipment intended to be used to measure the Heat Supply delivered to any Customer.

**Heat Supply**: the supply of heat to the Customers from the Energy System, and **Heat** shall be construed accordingly.

**Heat Trust Scheme:** means the voluntary scheme established to protect the interests of householders and micro businesses connected to heat networks in the UK, including the Heat Trust Scheme Rules (at <https://www.heattrust.org/the-scheme-rules>) and the Scheme Bye-Laws, or any equivalent replacement scheme thereof.

**Indirect Loss:** means loss of profit or revenue, loss of opportunity, loss of contract or loss of goodwill, the cost of obtaining any new financing or maintaining any existing financing (including the making of any scheduled or other repayment or prepayment of debt and the payment of any other costs, fees or expenses incurred in connection with the obtaining or maintaining of financing) but for the avoidance of doubt, shall not include any amounts expressly payable under this Agreement.

**Initial Void Period:** means the time (in days) commencing on the date when the [Registered Provider]/[Landlord] first takes possession of a Relevant Unit following practical completion of its construction and ending on the date the first tenant thereof enters into a Customer Supply Agreement is respect of such Relevant Unit.

**Initial Tenancy Details:** has the meaning given under Clause 7.4 (Customer Transfer of Responsibilities to Tenants).

**Insolvency Event:** in respect of either Party:

1. other than for the purposes of a bona fide reconstruction or amalgamation, such Party passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that Party being otherwise dissolved; or
2. the appointment of an administrator of, or the making of an administration order in relation to, either Party, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the entity's undertaking, assets, rights or revenue; or
3. that Party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors; or
4. that Party being unable to pay its debts, or being capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986 (as may be updated from time to time); or
5. that Party entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors.

**Law** means any law applicable in England and shall include common law, statute, statutory instrument, proclamation, by‑law, directive, decision, regulation, rule, order, notice, rule of court, instrument, or delegated or subordinate legislation and any enforceable community right within the meaning of section 2 of the European Communities Act 1972 in the United Kingdom, together with any applicable guidance, direction or determination with which ESCo is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to them and any applicable judgement of a relevant court of law which is binding in England and Wales.

1. **Lease** means a lease of a Unit for a term of not less than [seven (7)] years.
2. **Leased** means, in respect of a Unit, that Unit having become subject to a Lease.
3. **Loss(es):** means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands (excluding Indirect Losses), but, for the avoidance of doubt Losses shall include  [*Insert losses to be covered*] and any costs and/or losses which a Party is entitled to recover pursuant to the terms of this Agreement. *[Drafting Note: The Parties may want to consider specifying which losses they want to be covered].*
4. **Major Service Failure:** has the meaning given under Schedule 5 (Service Standards).

**Metering and Billing Regulations:** means the Heat Network (Metering and Billing) Regulations 2014 as amended or replaced from time to time.

**Monthly Service Failure:** has the meaning given in Schedule 5 (Service Standards).

**Month**: a calendar month, and monthly: shall be interpreted accordingly.

**Notice:** has the meaning given in Clause 29 (Notices) and **Notify** shall be construed accordingly.

**Notice of Defective Performance:** has the meaning given under Clause 17.1 (Notice of Defective Performance).

**Party** or **Parties:** means ESCo and/or the [Registered Provider]/[Landlord] individually or collectively as the context requires.

**Personal Data**: has the meaning given to that term in the Data Protection Legislation in force from time to time.

**Points of Connection**: means [ ].

**Planned Maintenance:** means any scheduled maintenance or repair required to be carried out by ESCo in relation to the Energy System.

1. **Pre-Payment Meter:** means a meter which has been calibrated so that  Customers pay for the Heat Supply by putting credit on their account before using energy rather than receiving an Energy Bills for their usage.
2. **Project:** has the meaning given in the Recitals.
3. **Recognised Investment Exchange:** has the meaning given to it in section 285 of the Financial Services and Markets Act 2000.
4. **Reconnection Charge:** means a charge for recommencing the Heat Supply to a Customer as set out under Schedule 3 (Customer Charges).
5. **[Registered Provider]/[Landlord] Cap on Liability:** means the cap on liability specified in Clause 14 (Limitations on Liability).
6. **[Registered Provider]/[Landlord] Property Damage** means any damage to or destruction of the Block or any third party property on the Block caused by or arising out of ESCo or an ESCo Related Party performing any of ESCo’s obligations, or exercising any of ESCo’s access rights, under this Agreement, but excluding any Indirect Loss.
7. **[Registered Provider]/[Landlord] Related Parties:** means the **[Registered Provider]/[Landlord]**’semployees, subcontractors, agents and Affiliates.

**[Registered Provider]/[Landlord] Termination Grounds:** means:

1. a Notice of Defective Performance has been issued by the [Registered Provider]/[Landlord] pursuant to Clause 16 (Termination) and ESCo:-
   1. has failed to either put forward a reasonable programme setting out how it proposes to remedy the breach (the “**ESCo Cure Programme**”) or to commence remedying the breaches specified in the Notice of Defective Performance within the ESCo Cure Period; and/or
   2. has put forward an ESCo Cure Programme but has materially failed to remedy the breaches specified in the Notice of Defective Performance in accordance with the ESCo Cure Programme; and/or;
2. an Insolvency Event occurs in relation to ESCo; and/or
3. ESCo has breached Clause 20 (Assignment and Other Dealings); and/ or
4. the aggregate liability of ESCo to the [Registered Provider]/[Landlord] arising out of or in connection with this Agreement and with respect to any and all claims and costs arising out of or under this Agreement, or arising out of the performance or non‑performance of any other obligation of ESCo in connection with this Agreement, including any non‑contractual obligations arising from this Agreement, exceeds the ESCo Cap on Liability.

**[Registered Provider]/[Landlord] Termination Payment:** means

1. [the Disconnection Charges];
2. [ ]][[11]](#footnote-12)

**[Registered Provider:** has the meaning given under the Housing and Regeneration Act 2008 as may be updated from time to time].

**Regulatory Body**: any government department and regulatory, statutory and any other entity, committee and body which, whether under statute, rules, regulations, code of practice or otherwise, is entitled by any applicable Law to supervise, regulate, investigate or influence the matters dealt with in this Agreement.

**Relevant Authority:** means any court with the relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom which has jurisdiction arising out of or in connection with the Block and/or the Energy System, including, the Heat Trust Ofgem and the Land Registry.

**Relevant Unit:** means a Residential Unit [or a Commercial Unit] which, subject to Clause 4 (Application) is subject to this Agreement.

**[Requests for Information:** shall have the meaning set out in the FOIA].

**Residential Comparator:** means the comparator set out under Schedule 3Part 1 (Residential Charges).

**Residential Customer:** means a customer taking a Heat Supply in a Residential Unit pursuant to a Residential Heat Supply Agreement.

**[Residential Heat Supply Agreement (Social):** means an agreement between a Residential Customer (which is the tenant of the Registered Provider) and ESCo for a Heat Supply in the form set out under Schedule 2 (Heat Supply Agreements)].

**[Residential Heat Supply Agreement:** means an agreement between a Residential Customer and ESCo for a Heat Supply in the form set out under Schedule 2 (Heat Supply Agreements)[[12]](#footnote-13)].

**Residential HIU:** mean the equipment Installed at each Residential Unit used for the transfer of Heat from the Energy System to the Unit Installation within a Residential Unit.

**Residential Unit:** mean self‑contained units of residential accommodation forming part of the Block, as identified under Parts 1 -3 of Schedule 1 (Units) or as notified by the Landlord pursuant to Clause 4.1 (Application).

**[Residual Charge:** means the Registered Provider’s share of the Standing Charge outside any Void Period, payable in accordance with Clause 7.2 (Charges payable by the Registered Provider) and in the amount set out under Schedule 3Part 1 (Residential Charges)][[13]](#footnote-14)

**Retail Prices Index/RPI**: the Retail Prices Index as published by the Office for National Statistics from time to time, or failing such publication, such other index as the Parties may agree most closely resembles such index].

**Service Failure**: a failure by ESCo to meet the Service Levels as set out under Schedule 5 (Service Standards).

**Service Failure Payment:** thecompensation required to be paid to the [Registered Provider]/[Landlord]pursuant to this Agreement for a Service Failure, as set out in Schedule 5 (Service Standards).

**Service Failure Points**: means points accrued by ESCo pursuant to the provisions of Schedule 5 (Service Standards).

**Service Levels**: the service levels as set out in Schedule 5 (Service Standards).

**Service Period:** means a continuous period of twelve (12) months or part thereof ending on [31 March].

**Service Standards:** means an indicator of ESCo performance as set out in Schedule 5 (Service Standards).

**Site:** means the site on which the Block is located as identified in Schedule 8 (Site).

**[Sufficient Security:** means either:

1. a bond or equivalent form of Security from a reputable financial institution (approved by ESCo (such approval not to be unreasonably withheld or delayed), in a form reasonably satisfactory to ESCo, in an amount equivalent to the [Registered Provider]/[Landlord] Cap on Liability; or
2. a guarantee in a form approved by ESCo or the [Registered Provider]/[Landlord] (as the context requires), such approval not to be unreasonably withheld or delayed][[14]](#footnote-15).

**Supply Period:** means a continuous period of 12 months ending on 31 March. Where the Supply Start Date in the first calendar year during which the [Registered Provider]/[Landlord] takes the Heat Supply (to any Relevant Unit [or any Common Part]) is after 31 March, the first Supply Period shall be the period from the Supply Start Date to the next 31 March.

**Summer Period:** means the period starting 1st May and ending 30th September.

**Supply Start Date**: means [●][[15]](#footnote-16).

**Standing Charge:** means the charge for maintenance and replacement of components of the Energy System charged to Customers under Customer Supply Agreements regulated in accordance with Clause 7.1 (Charges payable by Customers), the [Registered Provider]/[Landlord] pursuant to Clause 7.2 (Charges payable by the [Registered Provider]/[Landlord]) and Schedule 3 (Customer Charges).

**Tax** means any kind of tax, duty, levy or other charge whether or not similar to any in force at the Commencement Date and whether imposed by a local, governmental or other Regulatory Body in the United Kingdom or elsewhere.

**[Termination Compensation**: means the [Registered Provider]/[Landlord] Termination Payment or the ESCo Termination Payment].

**Termination Date**: has the meaning given under Clause 17 (Termination ) (and "**Termination**" shall be construed accordingly).

**Tertiary Network Specification:** means a specification provided by ESCo to the [Registered Provider]/[Landlord] in accordance with Clause 8.2 (Building Heating System and Unit Installation).

**Third Party:** means a third party who is not a Party to this Agreement, but shall not include Affiliates of ESCo or the [Registered Provider]/[Landlord].

**Unit:** means a Residential Unit [or a Commercial Unit as the context requires].

**Unit Installation:** means the network of internal pipes and other ancillary equipment located within each Unit that transfers Heat around the Unit from an HIU or a Commercial Unit Heat Exchanger and its isolation valves, [to be designed and installed by the [Registered Provider]/[Landlord] in compliance with the relevant Tertiary Network Specification provided by ESCo].

**Variable Charge**: mean the variable kWh charge for Heat consumed, charged to Customers under Customer Supply Agreements regulated in accordance with 7.1 (Charges payable by Customers), (Heat Charges to Customers), the [Registered Provider]/[Landlord] pursuant to Clause 7.2 (Charges payable by the [Registered Provider]/[Landlord]) and Schedule 3 (Customer Charges).

**VAT**: value added tax as provided for in the Value Added Tax Act 1994.

**Void Charge:** means the charges payable by the [Registered Provider]/[Landlord] during any Void Period in accordance with Clause 7.2 (Charges Payable by the [Registered Provider]/[Landlord] and in accordance with Clause 7.4 (Landlord Transfer of Responsibilities to Tenants) in the amount set out under Schedule 3 (Customer Charges).

**Void Period**: means either an Initial Void Period or a Between Tenancy Void Period (as relevant).

**Vulnerable Residential Customers** has the meaning given in the Residential Heat Supply Agreement.

**Winter Period** means the period starting 1 October ending 31 May.

* 1. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
  2. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules
  3. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
  4. A reference to **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 [and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:
     1. another person (or its nominee), whether by way of security or in connection with the taking of security; or
     2. its nominee.
  5. [For the purposes of determining whether a limited liability partnership is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.]
  6. Unless the context requires otherwise, words in the singular include the plural and in the plural include the singular.
  7. Unless the context requires otherwise, a reference to one gender shall include a reference to the other genders.
  8. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
  9. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
  10. [A reference to **writing** or **written** includes fax [and email **OR** but not email]][[16]](#footnote-17).
  11. A reference to **this Agreement** or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
  12. References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
  13. If there is an inconsistency between the clauses and Schedules respectively, the provisions in the clauses shall prevail in preference to the Schedules.
  14. Any words following the terms **including**, **include**, **in particular**, for example or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms.

1. Term
   1. This Agreement shall take effect on the Commencement Date and shall continue until the earlier of:
      1. the Termination Date; and
      2. the Expiry Date;

(the “**Term**”).

1. Connection
   1. Subject to [ ], ESCo shall allow connection of the Building Heating System to the Energy System at the Points of Connection. The [Registered Provider]/[Landlord] shall be entitled to remain connected to the Energy System throughout the term of this Agreement.
   2. Subject to Clause 3.3, ESCo shall Energise the Points of Connection for the duration of the Supply Period in accordance with Good Industry Practice.
   3. ESCo may De-Energise the Points of Connection forthwith where:
      1. it is obliged to do so by Law;
      2. it is necessary to do so for safety or to prevent injury or damage to person or property (whether due to the condition or state of repair of the Unit’s Installation or otherwise);
      3. it is necessary to do so due to an event of Force Majeure,

and shall at all times act in accordance with Good Industry Practice in relation to such De-Energisation, provided that, if such De-Energisation occurs prior to the Termination Date or Expiry Date:

* + 1. in so doing, it keeps the [Registered Provider]/[Landlord] and the applicable Customers fully and promptly informed of its actions, of the causes thereof and of the likely duration of the De-Energisation; and
    2. ESCo shall once more Energise such Points of Connection in accordance with Good Industry Practice as soon as is practicable after the cause of such De-Energisation ceases to operate.
    3. where the circumstances requiring the De-energisation result from a default by ESCo under this Agreement or a Customer Supply Agreement, the Standing Charge is suspended until the Points of Connection are Energised again.
  1. If at any time the [Registered Provider]/[Landlord] does not have a right for the Points of Connection to be Energised and nevertheless takes a Heat Supply through the Points of Connection, the [Registered Provider]/[Landlord] shall pay ESCo the Charges in accordance with Clause 7.2 (Charges payable by the [Registered Provider]/[Landlord]).
  2. [Where, under a Residential Heat Supply Agreement (Social) relating to a Relevant Unit, ESCo would have the right to suspend or disconnect a customer due to failure to make payments for Heat Supply under that Residential Heat Supply Agreement (Social), ESCo shall notify the Registered Provider via an “Intent to Disconnect Notice” prior to undertaking any suspension or disconnection. Following such notification(s), the RP shall within [5 (five) Business Days, notify ESCo that:-
     1. the Registered Provider will discharge the amounts due by the Customer in full within [10 (ten) Business Days, in which case ESCo will not proceed with suspension or disconnection; or that
     2. the Registered Provider will discharge the amounts due by the Customer in part within [10 (ten) Business Days; in which case ESCo may still at its discretion proceed with suspension or disconnection; [or that[[17]](#footnote-18)
     3. the Registered Provider instructs ESCo to install a Pre-Payment Meter at the Registered Provider cost. In such instance any additional debt incurred by the Customer in the period from such instruction until the date at which the Pre-Payment Meter is installed, shall be added to the Pre-Payment Meter as part of the total debt owed by the Customer. ESCo will use reasonable endeavours to carry out the installation of the Prepayment Meter within [10 (ten)] Business Days of receipt of the instruction from the Registered Provider.]
  3. If the Registered Provider does not respond to the Intent to Disconnect Notice within the prescribed time period then ESCo may, at its discretion, proceed with suspension or disconnection.
  4. [Where following instruction to install a Pre-Payment Meter pursuant to clause 3.5.3, ESCo is unable to gain access to the Relevant Unit, notwithstanding following the access procedure set out under the Residential Heat Supply Agreement (Social), ESCo will notify the Registered Provider via a “Prohibited Access Notice”. The Registered Provider will notify ESCo within [5 (five)] working days that:-
     1. it has no objections to ESCo proceeding with suspension or disconnection;
     2. it intends to discharge the amounts due by the Customer in full within [10 (ten)] working days (including any Reconnection Charges);
  5. If the Registered Provider does not respond to the Prohibited Access Notice within the prescribed time period ESCo may at its discretion proceed with suspension or disconnection][[18]](#footnote-19).
  6. The Registered Provider shall promptly notify ESCo where it becomes aware that any Vulnerable Residential Customer may cease to qualify as a Vulnerable Residential Customer.]

1. Application
   1. This Agreement shall initially apply to all Units in the Block and any additional Units which the [Registered Provider]/[Landlord] shall Notify to ESCo from time to time.
   2. [The Registered Provider may Notify ESCo the date on which it is no longer the Landlord of a Residential Unit and the Registered Provider no longer requires the Heat Supply to such Relevant Residential Unit].
   3. [An individual Unit shall, however, cease to be subject to this Agreement if[[19]](#footnote-20):
      1. it has been Leased or sold to a third party which is not an Affiliate of the Landlord; and
         1. the Landlord has notified ESCo of that fact in writing, providing details of the duration of the Lease or sale (as the case may be);
         2. such third party has entered into a Customer Supply Agreement with ESCo in respect of the relevant Unit; and
         3. such Customer Supply Agreement has become effective in accordance with its terms.
      2. the Landlord grants an interest other than a Lease in a Relevant Unit, or otherwise grants right of use or occupancy of a Relevant Unit other than by entering into a Lease, to a third party which is not an Affiliate of the Landlord; and
         1. the Landlord has notified ESCo of that fact in writing, providing details of the duration of the interest and has used reasonable endeavours to procure that such third party enters into a Customer Supply Agreement with ESCo in respect of such Relevant Unit;
         2. such third party has entered into a Customer Supply Agreement with ESCo in respect of the relevant Unit; and
         3. such Customer Supply Agreement has become effective in accordance with its terms;

provided that such Unit shall become a Relevant Unit again immediately on termination of such Customer Supply Agreement and shall again be subject to this Agreement (and there shall be no limit to the number of occasions on which any Unit may be subject to this Agreement). Each Party shall notify the other as soon as possible after becoming aware of the termination of such Customer Supply Agreement.]

* 1. Where the conditions set out in Clause [4.2]/**[**4.3] above apply to a Unit, that Unit shall cease [in accordance with Clause 4.3] to be subject to this Agreement and:
     1. that Unit shall no longer be considered a ‘Relevant Unit’ for the purposes of this Agreement;
     2. ESCo shall have no obligations to the [Registered Provider]/[Landlord] under this Agreement in connection with that Unit, including (without limitation) with respect to the provision of the Heat Supply and related services thereto (save in respect of any Service Failure Payments claimed by the [Registered Provider]/[Landlord] in accordance with Schedule 5 (Service Standards) or other amounts due to the [Registered Provider]/[Landlord] which have accrued prior to the time when the relevant Unit ceases to be subject to this Agreement); and
     3. the [Registered Provider]/[Landlord] shall have no obligations to ESCo under this Agreement in connection with that Unit, including (without limitation) with respect to any Charges (save any Charges which have accrued prior to the time when the relevant Unit ceases to be subject to this Agreement).
  2. In order to manage their respective rights and obligations under this Agreement, the Parties agree that on a regular basis, as agreed between the Parties acting reasonably and no more frequently than monthly in the first year after the date of this Agreement and thereafter no more frequently than quarterly, they shall seek to reconcile their respective records of the Relevant Units and those Units that are not or have ceased to become Relevant Units in the previous month and shall provide the other Party with such reasonable evidence if requested to support their respective records.
  3. For the avoidance of doubt, nothing in this Clause 4 (Application) shall affect any obligation either Party owes to the other under any other written agreement to which they are both Parties, including (without limitation) with respect to the payment of any amounts or the provision of any ESCo Services.

1. Supply of Heat
   1. ESCo shall provide the Heat Supply to the Block Connection Point and to each Relevant Unit on the terms of this Agreement, in accordance with the Service Standards, the Customer Supply Agreements, all relevant Law (including the Heat Network (Metering and Billing) Regulations 2014) and Good Industry Practice.
   2. Except during a suspension or interruption of the Heat Supply to a Relevant Unit, other than where ESCo has suspended the Heat Supply pursuant to Clause 7.5 (Failure to make Payment) the [Registered Provider]/[Landlord] shall in relation to all Relevant Units [and the Common Parts]:
      1. obtain the Heat Supply from ESCo; and
      2. ensure that no supplies of hot water or space heating except from ESCo at any time during the term of this Agreement.
   3. As far as is reasonably practicable, and other than in respect of any maintenance of any Heat Meter or HIU, ESCo shall only schedule Planned Maintenance to occur during the Summer Period.
   4. The [Registered Provider]/[Landlord] shall notify ESCo in writing of additional Relevant Units to which Heat Supply is required as soon as reasonably practicable.
   5. ESCo shall pay Service Failure Payments to the [Registered Provider]/[Landlord] in accordance with the terms of this Agreement.
2. Access[[20]](#footnote-21)
   1. ESCo will arrange any required access to Relevant Units directly with the occupiers of Relevant Units where Customer Supply Agreements are in place for the purpose of:
      1. installing or operating and maintaining its equipment, including HIUs, CIUs [Commercial Unit Heat Exchangers] and Heat Meters;
      2. reading, replacing, exchanging or inspecting Heat Meters;
      3. disconnecting the Heat Supply; or
      4. in an Emergency.
   2. If ESCo is unable to secure access as required through direct liaison with the occupiers of Relevant Units, notwithstanding following the access procedures set out under the relevant Customer Supply Agreement, ESCo will contact the [Registered Provider]/[Landlord] to seek assistance in securing such access and the [Registered Provider]/[Landlord] will promptly utilise its rights under its tenancy [or Lease] agreements to facilitate such access.
   3. In relation to access during Void Periods, the [Registered Provider]/[Landlord] shall allow ESCo and any ESCo Related Party, safe and uninterrupted access to each Relevant Unit (without charge) in any circumstances permitted under this Agreement or required by Law. Access shall be at a mutually convenient time and ESCo shall give the [Registered Provider]/[Landlord] reasonable notice (of not less than [three (3)] days, or [seven (7)] days in respect of Planned Maintenance) where such access is required, unless there is an Emergency or ESCo reasonably believes there is a danger to people or property (which is likely to be material or to have a material economic impact) or ESCo is required by Law to obtain access sooner.
   4. In addition to any other purpose expressly referred to in this Agreement, ESCo may require access for the purposes of:
      1. inspecting, operating, repairing, exchanging, installing, removing, testing, maintaining, or carrying out other activities in relation to the Heat Meter, the HIU, CIU, [the Commercial Unit Heat Exchanger] or the Energy System;
      2. suspending the Heat Supply to the Unit Installation as permitted under the terms of this Agreement;
      3. terminating this Agreement;
      4. mitigating any danger the ESCo reasonably believe exists to people or property; or
      5. any purpose required by Law.
   5. ESCo will take reasonable care when working in Relevant Units, will comply with all relevant access restrictions under the Customer Supply Agreements and will seek to comply with the [Registered Provider]/[Landlord]’s reasonable requests with request to security, access and Vulnerable Residential Customers in relation to such Relevant Units policies as from time to time notified to ESCo.
3. Payment and charges
   1. **[Charges payable by Customers[[21]](#footnote-22)**

ESCo shall ensure that:

* + 1. the Heat Charges payable by Residential Customers comply with the Residential Comparator;
    2. [the Heat Charges payable by Commercial Customers comply with the Commercial Comparator, unless otherwise agreed between any Commercial Customer and ESCo;] and
    3. [the service levels and service credits set out in the forms of Customer Supply Agreement in Schedule 2 (Customer Supply Agreement) are updated from time to time to ensure that they are no less favourable to Customers than the service levels and service credits set out in the Heat Trust Scheme Rules (<https://www.heattrust.org/the-scheme-rules>) (in respect of all Customers, [including those Commercial Customers not covered by such rules)][[22]](#footnote-23).] [*Drafting Note: ESCo will need to ensure that there is a system in place to monitor Heat Trust Scheme Rules and to amend customer supply agreements (within a reasonable period) following changes to the Heat Trust Scheme Rules.]*
  1. **Charges payable by the [Registered Provider]/[Landlord]** 
     1. The Charges as at the date of this Agreement are set out under Schedule 3 (Customer Charges) and shall be payable by the [Registered Provider]/[Landlord]in accordance with the terms of this Clause 7.2.
     2. The Charges shall be reviewed annually and shall be adjusted on [1 April][[23]](#footnote-24) in line with inflation and in accordance with Schedule 3 (Customer Charges).
     3. [The Registered Provider shall be responsible for payment of the Residual Charge plus VAT in respect of Heat Supply to each Relevant Unit, including where the Heat provided to a Relevant Unit Heating System is interrupted or unavailable for a period in circumstances expressly permitted elsewhere in this Agreement and where the Heat Supply is taken in breach of Clause 3.4 (Connection)].
     4. [The Registered Provider shall have the option to request an adjustment of the Residual Charge payable by the Registered Provider which will result in an increase or decrease in the Standing Charge payable by each Customer].
     5. [In the event that the Registered Provider notifies ESCo that it wishes to exercise the option referred to in Clause 7.2.4, the Parties shall agree (acting reasonably and without delaying such agreement) such amendment in writing to this Agreement and the Customer Supply Agreements as is required to effect the adjustment].
     6. The [Registered Provider]/[Landlord] shall be responsible for payment of the Void Charge plus VAT in respect of each Relevant Unit during all Void Periods, in accordance with clause 7.4 (Landlord Transfer of Responsibilities to Tenants) and including where the Heat Supply is taken in breach of Clause 3.4 (Connection)].
     7. ESCo shall issue an Energy Bill to the [Registered Provider]/[Landlord] in respect of each Billing Period on [or after] the invoice date, setting out:
        1. the Block and Relevant Units to which the Energy Bill is applicable;
        2. the Billing Period to which the Energy Bill relates;
        3. [in relation to the delivery of the Heat Supply to the Relevant Units, the Residual Charge payable, [charged in advance]];
        4. in relation to the delivery of the Heat Supply to the Relevant Units, any Void Charge payable, charged in arrears;
        5. [in relation to the delivery of the Heat Supply to Common Parts, the Variable Charge payable, based on:
           1. the amount of Heat Supply delivered to the relevant Common Part’s Connection Point in the previous billing period, as measured by the Heat Meter or based on a reasonable estimate pursuant to Clause 8.1.4; and
           2. the price per kWh of Heat Supply;
        6. [in relation to the delivery of the Heat Supply to Common Parts, the Standing Charge payable];
        7. any applicable VAT and any other taxes;
        8. any amounts to recover underpayments or overdue charges in accordance with Clause 7.5 (Failure to make payment);
        9. any amounts refunded or any Service Failure Payment paid following a Service Failure, set out in Schedule 5 (Service Standards);
        10. the amount of any adjustment following a disputed Energy Bill;
        11. the balance of the [Registered Provider]/[Landlord]’s account;
        12. [ ][[24]](#footnote-25)
     8. Where the Energy Bill is based on an estimate of the Heat Supply delivered, ESCo shall make any necessary adjustments after the next accurate Heat reading and shall debit or credit the Energy Bill for the next Billing Period.
     9. Where there has been undercharging for the Heat Supply delivered, ESCo may issue a Back-bill or reconcile the undercharging by applying a debit on [Registered Provider]/[Landlord]’s account. ESCo shall not be entitled to issue a Back-bill or reconcile the undercharging where more than a year has passed since the Billing Period in which the undercharging occurred.
     10. The [Registered Provider]/[Landlord] shall notify ESCo as soon as reasonably practicable (and in any event within [five (5)] business days) if the [Registered Provider]/[Landlord] disputes an estimated Energy Bill or a Heat Meter reading (pursuant to Clause 8.1.5 (Heat Meters).
  2. **Payment**
     1. The amounts set out in the Energy Bill shall be payable by the [Registered Provider]/[Landlord] within [twenty one (21)] days of the date of the [Registered Provider]/[Landlord]’s receipt of such Energy Bill the “**Due Date**”).
     2. If the [Registered Provider]/[Landlord] wishes to dispute any part of an Energy Bill in accordance with this Agreement then it must do so within [twenty eight (28)] days of the date of the Energy Bill.
     3. The [Registered Provider]/[Landlord] must pay any undisputed amount by the Due Date. On resolution of the dispute, within [fourteen (14)] days of the resolution of the dispute, as applicable, either the [Registered Provider]/[Landlord] shall pay any amount withheld determined to be owing by it or ESCo shall repay to the [Registered Provider]/[Landlord] any overpayment it is agreed or determined to have received as a credit against the next Energy Bill.
     4. The [Registered Provider]/[Landlord] shall be responsible for paying all Charges due under this Agreement until:
        1. termination of this Agreement pursuant to Clause 17 (Termination); or
        2. suspension of this Agreement pursuant to Clause 7.5 (Failure to make payment).
     5. Where the Agreement has not been terminated, responsibility for paying the Charges shall continue even if Heat Supply has been consumed at the Block without the [Registered Provider]/[Landlord]’s permission.
     6. The [Registered Provider]/[Landlord] shall remain liable to pay the Charges where the Heat Supply to the Block Connection Point is interrupted or unavailable. If the interruption or unavailability is due to a Service Failure, the [Registered Provider]/[Landlord] shall be entitled to a Service Failure Payments as set out under Schedule 5 (Service Standards).
  3. **[Registered Provider]/[Landlord]** **Transfer of Responsibilities to Tenants**
     1. When the first tenant moves into a Relevant Unit, [or the tenant (or lessee) changes in a Relevant Unit][[25]](#footnote-26), the [Registered Provider]/[Landlord] shall:
        1. ensure that such tenant (or lessee) receives the Customer Supply Agreement together with their tenancy agreement;
        2. shall use reasonable endeavours to ensure that the new tenant (or lessee) enters into such Customer Supply Agreement; and
        3. shall notify to ESCo the following details (“**Initial Tenancy Details**” [and “**Change of Tenancy Details**”][[26]](#footnote-27)) as soon as reasonably practicable on becoming aware of the Initial Tenancy Details [or Change of Tenancy Details as relevant] and in any event within [fourteen (14) days] of that event occurring:
           1. the date of the initial tenant moving into the property [or the change of tenancy];
           2. the Heat Meter read on the date of the initial tenant moving into the property [or the change of tenancy];
           3. the name and contact details for the new tenant (or lessee); and
           4. [the forwarding details for the previous tenant (or lessee)][[27]](#footnote-28).
     2. The [Registered Provider]/[Landlord] shall cease to be liable for the Voids Charges from the earlier of:
        1. entry by the incoming tenant into a Customer Supply Agreement;
        2. [where the incoming tenant (or lessee) fails to enter into a Customer Supply Agreement, provided that the [Registered Provider]/[Landlord]’s has complied with clause 7.4.1**,** the date of notification of the [Initial Tenancy Details]/ [Change of Tenancy Details] to ESCo];[[28]](#footnote-29)

[provided that the Registered Provider shall pay the Residual Charge for that Relevant Unit for the period that the tenant remains in the Relevant Unit].

* 1. **Failure to make payment**
     1. If the [Registered Provider]/[Landlord] fails to pay the Energy Bill by the Due Date, ESCo may undertake any of the following actions:
        1. ask the [Registered Provider]/[Landlord] to pay by another method;
        2. charge the [Registered Provider]/[Landlord] interest on the overdue amount at a rate of [•];
        3. request a refundable deposit equivalent to ESCo’s reasonable estimate of the Heat Charges for a period of [three (3) calendar months];
        4. request a guarantee for the [Registered Provider]/[Landlord]’s payments;
        5. take court action to recover the debt and ESCo’s costs;
        6. suspend or disconnect the Heat Supply to the Block.
     2. Before ESCo suspends or disconnect the [Registered Provider]/[Landlord]’s Heat Supply, ESCo shall:
        1. send the [Registered Provider]/[Landlord] at least two reminder letters; and
        2. use reasonable endeavours to contact the [Registered Provider]/[Landlord] by phone at least twice.
     3. ESCo may charge the [Registered Provider]/[Landlord] a debt-processing charge to cover ESCo’s reasonable costs of sending the reminder letters and taking action to collect the overdue Heat Charges.
  2. **Reconnecting the** [Registered Provider]/[Landlord]’s **supply** 
     1. Where ESCo has suspended or disconnected the [Registered Provider]/[Landlord]’s Heat Supply for non-payment, ESCo shall within [ • (• )] working hours’ of a request from the [Registered Provider]/[Landlord] make the Heat Supply available to the [Registered Provider]/[Landlord] if the [Registered Provider]/[Landlord] has, at the time of the request, paid to ESCo (and ESCo has received):
        1. all charges and amounts the [Registered Provider]/[Landlord] owes to ESCo including the Reconnection Charge and any debt-processing charges, in full; and
        2. a refundable deposit equal to ESCo’s reasonable estimate of [three (3) months’] Heat Charges.
     2. If the [Registered Provider]/[Landlord] pays ESCo a deposit, ESCo shall return that deposit once the [Registered Provider]/[Landlord] has kept the [Registered Provider]/[Landlord]’s payments up to date, in full, for [twelve (12)] months.

1. Meters and equipment
   1. **Meter readings**
      1. ESCo undertakes to accurately measure consumption of the Heat Supply at the Heat Meters. The [Registered Provider]/[Landlord] shall accept as accurate all meter readings taken or estimated by ESCo unless it reasonably considers there to be a material error in such readings or estimations or that the Heat Meter is defective.
      2. The Energy Bill shall show the amount of Heat Supply delivered to the [Block Connection Point][Points of Connection] which shall be recorded by the Heat Meter and the automated meter-reading system. Where possible, ESCo shall read the Heat Meters remotely every month without requiring access to the Units. If the ESCo is unable to read the Heat Meter remotely, ESCo shall, where possible, provide the [Registered Provider]/[Landlord] and/or Customers (as relevant) with the means to provide ESCo with reading(s).
      3. If ESCo has not been able to read a Heat Meter because of a fault in ESCo’s automated meter-reading system, the [Registered Provider]/[Landlord] has not been able to give ESCo the [Registered Provider]/[Landlord]’s own readings, or ESCo has reason to believe that the Heat Meter is not reading correctly, ESCo may send the [Registered Provider]/[Landlord] an Energy Bill and the [Registered Provider]/[Landlord] must pay ESCo on the basis of ESCo’s reasonable estimate of the amount of Heat Supply used.
      4. ESCo’s reasonable estimates of the Heat Supply will be based on the current, Variable Charge and Standing Charge and either:
         1. the pattern of energy use in the past; or
         2. the Heat Supply that ESCo estimates that is likely to be use given the size of the relevant Unit and comparison readings from other similar properties.
      5. If the [Registered Provider]/[Landlord] believes that a Heat Meter is faulty, the [Registered Provider]/[Landlord] must notify ESCo as soon as possible in order that ESCo can arrange a check as set out under Clause 8.1.6.
      6. If the [Registered Provider]/[Landlord] requests ESCo check the Heat Meter and ESCo finds that it is accurate, the [Registered Provider]/[Landlord] may be required to pay ESCo’s reasonable costs of checking the Heat Meter. The [Registered Provider]/[Landlord] shall not be required to pay any costs connected with an inspection of a Heat Meter if the Heat Meter is shown to be inaccurate (to greater than +/- [5%]) or not functioning correctly.
      7. ESCo may also ask to check a Heat Meter at any time if ESCo believes that it is not accurate. The [Registered Provider]/[Landlord] will not be required to pay any costs of checking if ESCo requests to check the Heat Meter unless it has damaged the Heat Meter.
      8. In the event that a Heat Meter records errors, ESCo shall recalibrate, repair or replace the Heat Meter promptly. ESCo shall be responsible for the cost of such replacement or repair unless the fault is due to any acts or omissions of the [Registered Provider]/[Landlord] (or its officers, employees, agents or contractors) in which event the [Registered Provider]/[Landlord] shall pay ESCo the reasonable costs of the repair or replacement of the Heat Meter.
      9. If, following any inspection, a Heat Meter is found to be defective or a Heat Meter reading is shown to be inaccurate, ESCo shall adjust the subsequent Energy Bill to account for any inaccurate Heat Meter reading.
   2. **Building Heating System and Unit Installations**
      1. ESCo is only liable for the Energy System and its interface (incorporating the HIUs [and/or Commercial Unit Heat Exchangers]) with the [Block Connection Point][Points of Connection]. ESCo shall not be responsible for the adequacy, safety or other characteristics of the Building Heating System and Unit Installations.
      2. The [Registered Provider]/[Landlord] shall at all times ensure that the Building Heating System and Unit Installations are maintained and repaired and, where necessary, replaced and keep the apparatus and controls forming part of the Building Heating System and Unit Installations set or adjusted to the reasonable satisfaction of ESCo in such manner as shall not adversely affect, diminish or endanger the Energy System or the Heat Supply. For the avoidance of doubt such the [Registered Provider]/[Landlord] shall be deemed to have satisfied this obligation provided it has[[29]](#footnote-30):-
         1. ensured that the water quality and the water pressure in the Unit Installation is in accordance with any reasonable requirements of the Tertiary Network Specification that ESCo shall have provided (within a sufficient period of time to enable compliance therewith) to the [Registered Provider]/[Landlord];
         2. ensured that where water softeners are installed on the domestic cold water system these must be maintained to operate at their design parameters in accordance with the Tertiary Network Specification; and
         3. ensured that should the heating and hot water system in any Unit be drained to facilitate modifications to the pipe work or for the removal of the radiators for decorating purposes, then the system is refilled, vented and treated with the appropriate corrosion inhibitor and the system pressure is set to the recommended level in accordance with the Tertiary Design Specification.
      3. If the [Registered Provider]/[Landlord] discovers or is alerted to the existence of any defect in any part of the Building Heating System and/or any Unit Installation which is likely to adversely affect or endanger the Energy System or ESCo’s employees, contractors or others acting on its authority, the [Registered Provider]/[Landlord] shall forthwith disconnect (if practicable) or request ESCo disconnects such part of the Building Heating System and/or any Unit Installation from the Energy System until such defect shall have been remedied to the reasonable satisfaction of ESCo (provided that ESCo shall not be entitled to seek an enhanced or improved technical specification of the Building Heating System and/or any Unit Installation (or any part thereof) as a result of any such repair or replacement).
      4. ESCo shall not be liable for the cost of replacement or repairs of any part of the Building Heating System and/or any Unit Installation save to the extent that such replacement or repairs arises due to the act of ESCo or an ESCo Related Party.
   3. **Energy System** 
      1. ESCo shall be responsible for maintenance of the Energy System at its own expense and the Energy System shall at all times be operated and maintained in accordance with the Service Standards, the Customer Supply Agreements, all relevant Law and Good Industry Practice.
      2. ESCo shall be responsible for and shall perform:
         1. the routine inspection, maintenance, repair and/or component part replacement of HIUs [and Commercial Unit Heat Exchangers][[30]](#footnote-31);
         2. the maintenance, repair and/or replacement of Heat Meters; and
         3. the maintenance, repair and/or replacement of CIUs;

#### in accordance with Good Industry Practice, subject to the exclusions in Schedule 6 (HIU Exclusions).

* + 1. If any CIU or HIU [or Commercial Unit heat Exchanger] requires repair the [Registered Provider]/[Landlord] may request that ESCo inspect such CIU or HIU [or Commercial Unit heat Exchanger] and try to identify any problem and rectify it.
    2. ESCo shall not be obliged to provide the services referred to in this Clause 8.3 (Energy System) where ESCo (acting reasonably and in accordance with Good Industry Practice) considers that there is a material health and safety risk, including due to the presence of dangerous materials, infestations, or likely harassment of its staff (including any verbal or physical abuse or threat of physical abuse).

1. Damage
   1. **[Registered Provider]/[Landlord] Obligations**
      1. The [Registered Provider]/[Landlord] shall be liable to ESCo for any Losses to the Energy System, the Heat Meter, the HIU, the CIU [or Commercial Unit Heat Exchanger] which in each case is caused by any work that the [Registered Provider]/[Landlord] does or has done (other than where carried out by ESCo) to the Building Heating System and/or any Unit Installation.
      2. The Landlord shall not and (in respect of any Heat Meter, CIU, HIU [or the Commercial Unit Heat Exchanger] to the extent that such Heat Meter, CIU, HIU [or Commercial Unit Heat Exchanger] is within a Relevant Unit) shall not allow any third party to:
         1. tamper with or damage the Energy System, the Building Heating System, any Unit Installation, any Heat Meter, CIU, HIU [or the Commercial Unit Heat Exchanger]; or
         2. misuse the Building Heating System and/or any Unit Installation so that it causes any damage to the Energy System, or any Heat Meter, CIU, HIU [or Commercial Unit Heat Exchanger], provided always that the [Registered Provider]/[Landlord] shall have no liability to ESCo under this Agreement or otherwise for such tampering or damage to the Building Heating System and/or any Unit Installation, any Heat Meter, CIU, HIU [or Commercial Unit Heat Exchanger], and/or any misuse of any such Building Heating System and/or any Unit Installation which is caused by ESCo or any ESCo Related Party.
      3. If any breach by the Landlord of Clause 9.1.2 causes damage to:
         1. the Energy System, the [Registered Provider]/[Landlord] will be liable for the damage caused, including the costs of repair or replacement, and ESCo may charge the [Registered Provider]/[Landlord] for the reasonable and properly incurred costs that ESCo incurs in repairing the Energy System, and replacing any relevant parts; or
         2. Heat Meter, CIU, HIU [or Commercial Unit Heat Exchanger], and ESCo is then unable to perform its obligations under this Agreement in respect of such Heat Meter, CIU, HIU [or Commercial Unit Heat Exchanger] because of such damage, ESCo’s obligations in respect of such Heat Meter, CIU, HIU [or Commercial Unit Heat Exchanger] shall be suspended until such time as the damage has been repaired to the extent necessary to enable ESCo to perform such obligations in accordance with this Agreement.
      4. The [Registered Provider]/[Landlord] shall inform ESCo as soon as reasonably practicable if the [Registered Provider]/[Landlord] becomes aware that any of the Heat Meter, CIU, HIU [or Commercial Unit Heat Exchanger] is damaged or destroyed, or if the [Registered Provider]/[Landlord] becomes aware that anyone other than ESCo or its agents interferes with or removes any Heat Meter, CIU, HIU [or Commercial Unit Heat Exchanger] or if the [Registered Provider]/[Landlord] believes any Heat Meter, CIU, HIU [or Commercial Unit Heat Exchanger] has been damaged.
   2. **ESCo’s obligations**

ESCo shall be liable for any Losses whatsoever in respect of any personal injury to or death of any person whomsoever and any property within a Relevant Unit or to any [Registered Provider]/[Landlord] property, due to any negligent error, act or omission of ESCo or any ESCo Related Party and shall make good any such damage caused to the satisfaction of the Registered Provider]/[Landlord] or its tenant (or lessee) as soon are reasonably practicable.

1. Data processing
   1. The Parties shall at all times handle and use all Personal Data they acquire under or in connection with this Agreement or any Customer Supply Agreement which relates to any individual in accordance with all applicable Data Protection Legislation.
   2. Without prejudice to Clause 10.1, if any Personal Data is transferred from one Party to the other in connection with performance of this Agreement then each of the Parties shall comply with Schedule 4 (Data processing), which sets out in further detail the legal obligations of the Parties in relation to such a transfer under Data Protection Legislation, taking into account related guidance from regulators, as at the date of this Agreement.
   3. ESCo shall update the Data Protection Protocol from time to time to reflect any relevant change in Law as it relates to applicable Data Protection Legislation, taking into account related guidance from regulators.
2. Confidentiality
   1. **Duty of confidentiality**

Save as provided by Clause 11.2 each Party shall:

* + 1. keep confidential all Confidential Information it receives or obtains; and
    2. exercise in respect of the Confidential Information the same controls as that Party employs to protect its own Confidential Information.
  1. **Permitted Disclosure**

A Party (the **Disclosing Party**) may disclose or permit the disclosure of Confidential Information:

* + 1. to its employees to the extent that it is reasonably necessary and to any person (including insurance, legal, technical and financial advisers, auditors and accountants) engaged in providing any goods, works or services to the Disclosing Party in connection with and for the purposes of this contract;
    2. in the case of ESCo to any replacement heat supplier or any entity engaged or which may be engaged on or following the termination of this contract to perform any of the obligations of the heat supplier under this contract;
    3. to the extent that the confidential information:
       1. has become publicly available or generally known to the public at the time of such disclosure otherwise than as a result of a breach of this Clause 11.
       2. was already in the unrestricted possession of the Disclosing Party prior to receiving or obtaining such confidential information as a result of entering into or performing this contract; and
       3. was lawfully received or obtained by the Disclosing Party from any person without restriction on its use or disclosure;
    4. to enable a determination to be made under Clause 19 (Dispute Resolution Procedure).
    5. when required to do so in any jurisdiction:
       1. by Law;
       2. by or pursuant to the rules or any order of any court, tribunal or agency of competent jurisdiction; or
       3. by any securities exchange, Recognised Investment Exchange or regulatory or governmental body having jurisdiction over it wherever situated;
    6. to any regulatory or governmental body (including any Regulatory Body) in any jurisdiction and having jurisdiction over:
       1. the Disclosing Party; or
       2. the obtaining, monitoring and/or enforcement of any Authorisation;
    7. to enable any registration or recording of any Authorisation;
    8. to a relevant tax authority in any jurisdiction to the extent required for the proper management of the taxation affairs of the Disclosing Party;
    9. to insurers for the purpose of obtaining any insurances;
    10. if such disclosure is expressly permitted by some other provision of this Agreement or if the other Party has given prior written approval to the disclosure (such approval not to be unreasonably withheld or delayed).
  1. **Obligations preserved**
     1. Subject to Clause 11.3.2 and Clause 11.4 if a Party is required to disclose Confidential Information in a manner permitted by Clause 11.2.2, or Clause 11.2.9 then it shall:
        1. inform the person to whom Confidential Information is to be disclosed of the restrictions contained in this Agreement; and
        2. ensure that such person shall observe such restrictions notwithstanding that such person is not Party to this Agreement.
     2. For the avoidance of doubt, a Party is deemed to have satisfied its obligation in Clause 11.3.1(b) if, prior to the disclosure of the Confidential Information, it enters into a contract with the person referred to in Clause 11.3.1(b) which contains an equivalent confidentiality arrangement to this Clause 11.
  2. **Consultation**
     1. If a Party is required to disclose Confidential Information in a manner permitted by Clause 11.2.5, Clause 11.2.6, or Clause 11.2.8, it shall insofar as reasonably practicable:
        1. provide the other Party with advance notice of the requirement and a copy of the information to be disclosed; and
        2. permit the other Party to make representations or objections in relation to it and take into account such reasonable representations and objections that the other Party shall make.
  3. **Exploitation of information**

No Party shall make use of this Agreement or any information (including Confidential Information) issued or provided by or on behalf of either Party in connection with this Agreement otherwise than for the purposes of this Agreement, except with the written consent of the other Party.

* 1. **Continuance of obligations**

The obligations in this Clause 11 shall continue to apply after termination of this Agreement.

* 1. **Return or destruction of confidential information**

On termination of this Agreement for any reason each Party shall, to the extent requested by the other Party who provided them and without retaining copies, destroy all documents or other records containing confidential information or return them to the other Party.

* 1. **Enforcement rights of parties regarding confidential information**

Each Party accepts and agrees that any Confidential Information received or obtained by that Party as a result of entering into or performing this contract is, by its nature, valuable proprietary commercial information, the misuse of or unauthorised disclosure of which would be likely to cause considerable and uncompensatable damage to the Party from whom that information was received or obtained and accordingly the Parties agree that, without prejudice to any other rights or remedies which may be available in respect of any breach of this Agreement that are expressly provided for in this Agreement, each Party will be entitled to relief by way of injunction, including any interim injunction available from any competent court having jurisdiction over its terms.

1. Compliance and change in laws
   1. In performing its obligations under this Agreement, ESCo shall comply with all Laws and shall[[31]](#footnote-32):
      1. [inform the [Registered Provider]/[Landlord] as soon as it becomes aware of any changes in the Laws that may impact the provision of the Heat Supply to the Block];
      2. [provide the [Registered Provider]/[Landlord] with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes];
      3. [consult with the [Registered Provider]/[Landlord] and if possible (but in ESCo’s reasonable discretion) agree with the [Registered Provider]/[Landlord], on the manner, form and timing of changes it proposes to make to meet those changes in the Laws];
      4. use all reasonable endeavours to minimise any disruption caused by any changes in Laws introduced pursuant to this Clause 12.
   2. ESCo may increase the Heat Charges where any taxes, levies or duties on the production or provision of the Heat Supply (other than corporation tax or any other similar tax on ESCo’s profits or gains) in effect at the Commencement Date are increased or there is a change in Law relating to the production or provision of the Heat Supply which results in any new tax, levy, duty or impost (not in force at the Commencement Date) being charged, levied or imposed on ESCo. *[Drafting Note:* *Parties to consider whether there are any circumstances in which they would want to terminate this agreement following a change in law.]*
   3. If there is a reduction or discontinuance of taxes, levies or duties in effect as at the Commencement Date ESCo shall reduce the Heat Charges according to the amount of relief to the extent that the Heat Charges apply such taxes, levies or duties.
   4. Any increase or decrease in the Heat Charges under this Clause 12 shall apply from the date that the relevant change in any tax, levy, duty or impost takes effect.
2. Force majeure
   1. Without prejudice to ESCo’s rights pursuant to Clause 8.3.2 and Schedule 6 of this Agreement and subject to the remaining provisions of this Clause 13, neither Party to this Agreement shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure Event.
   2. In the event that either Party is delayed or prevented from or hindered in performing its obligations under this Agreement by a Force Majeure Event, such Party shall:
      1. give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause of the delay or prevention and its estimated duration;
      2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
      3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
   3. A Party cannot claim relief if the Force Majeure Event is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
   4. As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. The affected Party shall take or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Good Industry Practice.
   5. The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
   6. The Parties shall endeavour to agree any modifications to this Agreement which may be equitable having regard to the nature of an event or events of Force Majeure.
   7. If, in the circumstances referred to in this Clause 13, the Parties have failed to reach agreement on any modification to this Agreement pursuant to Clause 13.6, and the event of Force Majeure continues for more than [one (1)[[32]](#footnote-33)] calendar month from the date on which the Affected Party served Notice on the other Parties in accordance with Clause 13.2.1 (“**Prolonged Force Majeure**”), and the event of Force Majeure affects all or a substantial part of a Party's material obligations under this Agreement) any Party may, at any time whilst the event of Force Majeure continues, terminate this Agreement by Notice to the other, whereupon the provisions of Clause 18 (Consequences of Termination or Expiry) shall apply.
   8. During any period of Force Majeure in which the Heat Supply is affected, ESCo shall comply with its obligations to [Registered Provider]/[Landlord] and the Customers in relation to the Heat Supply in accordance with this Agreement and the relevant Customer Supply Agreement at no additional cost to the [Registered Provider]/[Landlord].
3. Limitations on liability
   1. General
      1. Each Party acknowledges and agrees that:
         1. without limiting the operation of Clause 14.1.1(b), the provisions of this Clause 14 are fair and reasonable having regard to the circumstances as at the date hereof and have been subject to full negotiation;
         2. this Agreement satisfies the requirement of reasonableness within the meaning of sections 2(2) and 11 of the Unfair Contract Terms Act 1977; and
         3. the limitations of liability set out in Clauses 14.2 and 14.3 shall, as they apply to a Party, apply to any indemnities given by that Party under this Agreement. *[Drafting Note: The Parties may want to consider whether they want to carve out any indemnities from the liability caps.]*
      2. No Party shall be liable to the other under or in connection with this Agreement (including under the Leases and whether in contract, negligence or otherwise) for any Indirect Losses.
   2. Liability of [Registered Provider]/[Landlord]
      1. The [Registered Provider]/[Landlord]'s liability to ESCo howsoever arising out of or in connection with this Agreement (including under the Leases and whether in contract, negligence or otherwise) shall:
         1. in respect of any Losses recoverable by it under any of the insurances required pursuant to Clause 16 (Insurance), be the amount recovered by [the Registered Provider][the Landlord] under such insurances or that would have been recoverable but for the breach by [the Registered Provider][the Landlord] of its obligations under Clause 16 (Insurance); or
         2. in the case of ESCo Property Damage, not exceed [ ] ([ ] pounds Sterling) per incident or series of related incidents; or
         3. in the case of all other Losses , not exceed in aggregate [ ] ([ ] pounds Sterling)

(together, the "**[Registered Provider]/[Landlord] Cap on** Liability").

* + 1. The [Registered Provider]/[Landlord] may at any time request an increase in the [Registered Provider]/[Landlord] Cap on Liability by giving written Notice to ESCo of such increase sought, provided that the [Registered Provider]/[Landlord] Cap on Liability shall only be increased with ESCo’s consent (not to be unreasonably withheld or delayed).
  1. Liability of ESCo
     1. ESCo's liability to the [Registered Provider]/[Landlord] howsoever arising out of or in connection with this Agreement (including under the Leases and whether in contract, negligence or otherwise) shall:
        1. in respect of any Losses recoverable by it under any of the insurances required pursuant to Clause 16 (Insurance), be the amount recovered by ESCo under such insurances or that would have been recoverable but for the breach by ESCo of its obligations under Clause 16 (Insurance);
        2. in the case of [Registered Provider]/[Landlord] Property Damage, not exceed [ ] ([ ] pounds Sterling) per incident or series of related incidents; or
        3. in the case of all other Losses , not exceed in aggregate [ ] ([ ] pounds Sterling).

(together the "**ESCo Cap on Liability**").

* + 1. ESCo may at any time request an increase in the ESCo Cap on Liability by giving written Notice to the [Registered Provider]/[Landlord] of such increase sought, provided that the ESCo Cap on Liability shall only be increased with the [Registered Provider]/[Landlord]'s consent (not to be unreasonably withheld or delayed).
  1. General exclusions
     1. No provision of this Agreement or any of the Project Agreements shall limit the liability of either Party to the other Party in respect of:-
        1. death or personal injury resulting from the negligence of a Party or any of its officers, employees or agents; and
        2. for any Losses resulting from the wilful default of, or fraudulent misrepresentation or fraudulent concealment by, that Party; and
     2. Neither Party shall have any liability to the other Party for any Losses to the extent that the Losses were caused by a breach by that other Party.
     3. To the extent permitted by any applicable Law, neither Party shall be liable to the other under this Agreement for any Indirect Loss.
     4. In respect of any Losses suffered by ESCo in respect of which it has a cause of action against a Customer under a Customer Supply Agreement, ESCo shall have no separate cause or right of action against the [Registered Provider]/[Landlord] under this Agreement in respect of the same Losses.

1. **Mitigation**

If either Party incurs any Loss, for any cause arising out of or in relation to this Agreement or any of the Project Agreements, that Party shall take such steps as are reasonable in order to mitigate such Loss.

1. Insurance
   1. ESCo shall take out and maintain (or procure the taking out and maintenance of) the following insurance policies with reputable insurers throughout the term of this Agreement, together with and any other insurances as may be required by Law:
      1. employer's liability insurance as required under applicable Laws covering all employees of the ESCo engaged in the performance of its obligations under or pursuant to this Agreement in a sum of not less than [five (£5)] million per event or series of related events for injury arising out of acts of terrorism and [ten (£10)] million per event or series of related events in relation to all other liabilities the subject of this clause; and
      2. general third party liability insurance in a sum of not less than [ten (£10)] million per event or series or related events and products liability in the sum of [ten (£10)] million in aggregate;
      3. insurance against loss or damage to the Energy System on an agreed basis in an amount equal to the equipment's full replacement and reinstatement value from time to time;
      4. professional indemnity insurance in a sum of [five (£5)] million for each and every loss and in the annual aggregate;

and shall provide evidence as to the extent and continuance of such insurances to the [Registered Provider]/[Landlord], at any time and from time to time upon request.

* 1. [Reinstatement

All insurance proceeds received under any policy maintained by ESCo referred to in this Clause 16 insofar as they relate to damage to the Energy System or any part thereof shall be applied to repair, reinstate and replace each part or parts of the Energy System in respect of which the proceeds were received, as soon as is reasonably practicable][[33]](#footnote-34).

1. Termination
   1. Notice of Defective Performance

If a Major Service Failure has occurred pursuant to Schedule 5 (Service Standards) the [Registered Provider]/[Landlord] may issue a Notice (a "**Notice of Defective Performance**") specifying a reasonable time limit within which ESCo must commence and complete rectification action to rectify the position (the "**ESCo Cure Period**").

* 1. Right to Serve Warning Notice
     1. If ESCo Termination Grounds occur then ESCo may, in its discretion at any time within three months of the relevant occurrence of ESCo Termination Grounds, give written Notice (an "**ESCo Warning Notice**") to the [Registered Provider]/[Landlord] of its right to terminate this Agreement.
     2. If [Registered Provider]/[Landlord] Termination Grounds occur then the [Registered Provider]/[Landlord] may, in its discretion at any time within three months of the relevant occurrence of [Registered Provider]/[Landlord] Termination Grounds, give written Notice (a "**[Registered Provider]/[Landlord] Warning Notice**") to ESCo of its right to terminate this Agreement.
  2. Timing of Service of Final Termination Notice
     1. Notwithstanding service of an ESCo Warning Notice by ESCo or a [Registered Provider]/[Landlord] Warning Notice by the [Registered Provider]/[Landlord], this Agreement will only terminate after service of a further notice (a "**Final Termination Notice**") by ESCo (where an ESCo Warning Notice was served) or the [Registered Provider]/[Landlord] (where a [Registered Provider]/[Landlord] Warning Notice was served) confirming that it wishes to proceed with termination of this Agreement and subject to the remaining provisions of this Agreement including Clause 18 (Consequences of Termination or Expiry).
     2. Any such Final Termination Notice, if to be served, must be served within three months of service of the ESCo Warning Notice or [Registered Provider]/[Landlord] Warning Notice (as the case may be).
     3. Following service of a Final Termination Notice, this Agreement shall without prejudice to the provisions of Clause 18 (Consequences of Termination or Expiry) terminate on the relevant date specified therein (which date, other than in the case of an Insolvency Event, shall not be more than [three (3)] months after, the date of the Final Termination Notice) (the “**Termination Date**”).
  3. Exclusive grounds of termination
     1. The [Registered Provider]/[Landlord] agrees and acknowledges that its right to terminate this Agreement pursuant to the provisions of Clause 17.3 shall be the sole grounds upon which the [Registered Provider]/[Landlord] may terminate this Agreement due to breach of this Agreement by ESCo.
     2. ESCo agrees and acknowledges that its right to terminate this Agreement pursuant to the provisions of Clause 17.3 shall be the sole grounds upon which ESCo may terminate this Agreement due to breach of this Agreement by the [Registered Provider]/[Landlord].

1. Consequences of termination or expiry
   1. Termination of this Agreement pursuant to Clause 17 (Termination) shall have effect in accordance with this Clause 18.
   2. Without prejudice to Clause 18.4 (Continuing Obligations), where this Agreement is terminated by either Party pursuant to Clause 13.7 (Force Majeure) by reason of prolonged Force Majeure, neither Party shall have any liability to the other in respect of any Losses arising as a result of the early termination of this Agreement.
   3. **Payments on Termination** 
      1. The [Registered Provider]/[Landlord] shall pay all Charges due up to and including the Termination Date or Expiry Date.
      2. [Where this Agreement is terminated for reason of ESCo Termination Grounds, the [Registered Provider]/[Landlord] shall pay the [Registered Provider]/[Landlord] Termination Payment to ESCo, subject to the limits on liability set out in Clause 14 (Limitations on Liability).][[34]](#footnote-35)
      3. [Where this Agreement is terminated for reason of Developer Termination Grounds, ESCo shall pay to the [Registered Provider]/[Landlord] the ESCo Termination Payment, subject to the limits on liability set out in Clause 14 (Limitations on Liability).]
   4. **Continuing Obligations**

Save as otherwise expressly provided in this Agreement the Expiry or Termination of this Agreement shall be without prejudice to:

* + 1. any antecedent or accrued rights, reliefs, remedies or liabilities arising out of or in connection with this Agreement prior to or as at the Expiry Date or Termination Date (as applicable);
    2. any rights of the Parties under any provision of this Agreement which is expressed to survive Termination or which is required to give effect to such termination or the consequences of such Termination;
    3. the continuing rights and obligations of the Parties under Clause 11 (Confidentiality), Clause 14(Limitations on Liability), Clause 15 (Mitigation), this Clause 18 (Consequences of Termination or Expiry), Clause 19 (Dispute Resolution Procedure) Clause 29 (Notices), Clause 31 (Governing Law) and Clause 32 (Jurisdiction).

1. Dispute Resolution Procedure
   1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**), then [, except as expressly provided in this Agreement,] the Parties shall follow the procedure set out in this clause:
      1. either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of [Party 1] and [EMPLOYEE TITLE] of [Party 2] shall attempt in good faith to resolve the Dispute;
      2. if the [EMPLOYEE TITLE] of [Party 1] and [EMPLOYEE TITLE] of [Party 2] are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of [Party 1] and [SENIOR OFFICER TITLE] of [Party 2] who shall attempt in good faith to resolve it; and
      3. if the [SENIOR OFFICER TITLE] of [Party 1] and [SENIOR OFFICER TITLE] of [Party 2] are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the Parties agree to enter into mediation in good faith to settle the dispute in accordance with [the CEDR Model Mediation Procedure **OR** OTHER PROCEDURE]. Unless otherwise agreed between the Parties within [NUMBER] days of service of the Dispute Notice, the mediator shall be nominated by [CEDR **OR** OTHER BODY **OR** OTHER PERSON]. To initiate the mediation, a Party must serve notice in writing (**ADR notice**) to the other Party to the Dispute, referring the dispute to mediation. [A copy of the ADR notice should be sent to [CEDR **OR** OTHER PROVIDER]]. Unless otherwise agreed between the Parties, the mediation will start not later than [NUMBER] days after the date of the ADR notice.
   2. The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under Clause 32 (Jurisdiction) which clause shall apply at all times.

**OR**

No Party may commence any court proceedings under Clause 32 (Jurisdiction) relation to the whole or part of the Dispute until [NUMBER] days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.]

1. Assignment and other dealings
   1. ESCo shall not assign, novate, transfer or dispose of any of its rights and/or obligations under the Customer Supply Agreements, or this Agreement, other than to an entity that simultaneously accepts a transfer of the whole of ESCo's rights and obligations under the Concession Agreement, including legal and beneficial title to and interest in the Energy System and the Customer Supply Agreements[[35]](#footnote-36).
   2. The [Registered Provider]/[Landlord] shall not assign, novate, transfer or dispose of any of its rights under this Agreement without ESCo’s consent, unless such assignment, novation, transfer or disposal is to an entity that:
      1. simultaneously accepts a transfer of the whole of the [Registered Provider]/[Landlord]’s rights and obligations under this Agreement;
      2. in ESCo's reasonable opinion, has sufficient financial standing or Sufficient Security has been provided; and
      3. demonstrates to ESCo's reasonable satisfaction, has or has procured the technical resources to perform its obligations under this Agreement.
   3. Either Party may subcontract any of its obligations under this Agreement to any third party (including, without limitation, any Affiliate of such Party), provided that such Party shall remain liable in accordance with this Agreement for the acts and omissions of any such subcontractor.
2. Variation

Either Party shall be entitled to request an amendment, change, revision or variation to this Agreement provided that no variation of this Agreement shall be effective unless it is in writing and signed by both Parties.

1. Waiver

No failure or delay by a Party to exercise any right or remedy provided under this Agreement 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.

1. Rights and remedies

[Except as expressly provided in this Agreement, the **OR** The] rights and remedies of the Parties provided under this Agreement are in addition to, and not exclusive of, any of its rights or remedies provided by.

1. No partnership or agency
   1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
   2. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
2. Severance
   1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
   2. If any provision or part-provision of this Agreement is deemed deleted under clause 25.1, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
3. Further assurance

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

1. Entire agreement
   1. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
   2. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
2. Third party rights
   1. This Agreement does not give rise to any rights under the Contracts (Rights of Third parties) Act 1999 to enforce any terms of this Agreement.
   2. The rights of the Parties to rescind or vary this Agreement are not subject to the consent of any other person.
3. Notices
   1. A notice or communication given to a Party under or in connection with this Agreement shall be in writing and sent to the Party at the address [or email address] given in this Agreement or as otherwise notified in writing to [the **OR** each] other Party.
   2. This clause 29.2 sets out the delivery methods for sending a notice to a Party under this Agreement and, for each delivery methods, the date and time when the notice is deemed to have been received or given (provided that all other requirements of this clause have been satisfied and subject to the provisions in clause 29.3).
      1. if delivered by hand, on signature of a delivery receipt[ or at the time the notice is left at the address];
      2. if sent by [pre-paid first class post or other[ next working day delivery service[ providing proof of [postage **OR** delivery]] at 9.00am on the [second] Business Day after posting[ or at the time recorded by the delivery service];
      3. if sent by pre-paid airmail [providing proof of [postage **OR** delivery]], at [9.00am on the [fifth] Business Day after posting[ or at the time recorded by the delivery service] OR [INSERT TIME AND DATE]; [or]
      4. [if sent by email, at the time of transmission; [or]]
      5. [if sent by fax, at the time of transmission.]
   3. If deemed receipt under clause 29.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 29.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
   4. 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.
   5. [A notice given under this Agreement is not valid if sent by email.]
4. Counterparts
   1. This Agreement may be executed in any number of counterparts, each of which when executed [and delivered] shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.
   2. [Transmission of [an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) **OR** the executed signature page of a counterpart of this Agreement] by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each Party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.]
   3. [No counterpart shall be effective until each Party has executed [and delivered] at least one counterpart.]
5. Governing law

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

1. Jurisdiction

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

1. - Units
   * 1. - Residential Units (Leasehold/ Freehold)
     2. - Residential Units (Social tenancies)
     3. - Commercial Units
2. – Customer Supply Agreements
   * 1. - [Residential Supply Agreement (Social Housing)]
     2. - [Residential Supply Agreement (Private Housing)]
     3. – [Commercial Unit Supply Agreement]
3. – Customer Charges
   * 1. - Residential Charges
4. **CHARGES**
   1. **Heat Charges**
      1. The Heat Charges at the Commencement Date shall be [ ].
      2. The Heat Charges shall comprise:
         1. [a Standing Charge]
         2. [a Variable Charge]
   2. ESCo shall be entitled to amend or change the Heat Charges charged to Customers:
      1. in accordance with Clause 12 (Compliance and Change in Law) if there is a change in Law, taxation or government levies which directly affects or applies to the Heat supplied or the method by which it is generated; or

in accordance with the Price Review in paragraphs 2 and 3 of this Schedule 3, Part 1. *[Drafting Note: Changes in law could lead to increases or decreases in heat charges – e.g. a change in tax of input fuel which ESCo could seek to pass-through to customers. If charges are benchmarked against a comparator, the methodology of that comparator (particularly the cost inputs into that comparator model) would need to be reviewed. It ought to be considered also, that, in the future, district heating schemes could be regulated and new laws introduced.]*

1. **VARIABLE CHARGE CALCULATION AND REVIEW** 
   1. ESCo shall review the Variable Charge on [1 April] of each Contract Year during the term of this Agreement (the “**Residential Heat Charge Review Date”**) in accordance with the terms of the Concession Agreement.
   2. [The Variable Charge proposed for any Contract Year shall always be [*set as against comparison forms of heating* ] as set out under paragraph 4, and shall be calculated as follows][[36]](#footnote-37):

[ ]

1. **STANDING CHARGES CALCULATION AND REVIEW** 
   1. In addition to commodity charges for Heat, the Residential Customers will also be charged Standing Charges. These charges are a share of the fixed costs (i.e. non commodity charges) associated with the operation and maintenance of the Energy System[[37]](#footnote-38).
   2. The charges also cover a share in the costs of any plant replacement during the term of this Agreement.
   3. The Standing Charge will be calculated in accordance with the following formula:

[ ]

subject to an annual inflationary increase of RPIx each Contract Year [and subject to not exceeding the equivalent pricing set out in the Residential Comparator below].

* 1. [The Standing Charge shall not exceed the cost to maintain and replace [ ]][[38]](#footnote-39).

1. **RESIDENTIAL COMPARATOR** 
   1. The basis of the Residential Comparator calculation shall be as follows:
      1. The energy demand will be based on the following table (figures expressed in kWh/m2);

|  |  |
| --- | --- |
| 1 Bed | [ ] |
| 2 Bed | [ ] |
| 3 Bed | [ ] |
| 4 Bed | [ ] |

* + 1. *[Include details of Residential Comparator]]*

1. **OTHER CHARGES**
   1. The Disconnection Charge at the Commencement Date shall be [ ]. ESCo may change the amount of Disconnection Charge annually on [31 March] in accordance with the respective annual change in [RPI].
   2. The Reconnection Charge at the Commencement Date shall be [ ]. ESCo may change the amount of Reconnection Charge annually on [31 March] in accordance with the respective annual change in [RPI].
      1. - Commercial Charges

Definitions:

For the purposes of this Part 2, the “**Customer**” shall be interpreted as the [Landlord] as the context requires.

* + - 1. CHARGES
         1. **Heat Charges**

The Heat Charges at the Commencement Date shall be [ ]:

The Heat Charges shall comprise:

[a Standing Charge]

[a Variable Charge]

* + - * 1. **[Electricity Charges]**

The Electricity Charge at the Commencement Date shall be [ ].

The Electricity Charge for each month shall be calculated as follows:

[ ]

* + - * 1. ESCo shall be entitled to amend or change the Charges charged to the Customer:

if there is a change in Law, taxation or government levies which directly affects or applies to the Heat Supply or the method by which it is generated; or

in accordance with the Price Review in paragraphs 2, 3 and 5 of this Schedule 3, Part 1. *[Drafting Note: Changes in law could lead to increases or decreases in heat charges – e.g. a change in tax of input fuel which ESCo could seek to pass-through to customers. If charges are benchmarked against a comparator, the methodology of that comparator (particularly the cost inputs into that comparator model) would need to be reviewed. It ought to be considered also, that, in the future, district heating schemes could be regulated and new laws introduced.]*

* + - 1. VARIABLE CHARGE CALCULATION AND REVIEW
         1. ESCo shall review the Variable Charge on [1 April] of each Contract Year during the term of this Agreement (the Commercial Heat Charge Review Date) [in accordance with the Concession Agreement][[39]](#footnote-40).
         2. [The Variable Charge proposed for any Contract Year shall always be [*set as against comparison forms of heating* ] as set out under paragraph 4, and shall be calculated as follows] :

[ ]

* + - 1. STANDING CHARGES CALCULATION AND REVIEW
         1. In addition to commodity charges for Heat, the Customer will also be charged Standing Charges. These charges are a share of the fixed costs (i.e. non commodity charges) associated with the operation and maintenance of the Energy System.
         2. The charges also covers a share in the costs of any plant replacement for the term of the Agreement.
         3. The Standing Charge will be calculated in accordance with the following formula:

[ ]

subject to an annual inflationary increase of RPIx each Contract Year [and subject to not exceeding the equivalent pricing set out in the Commercial Comparator below].

* + - * 1. [The Standing Charge shall not exceed the cost to maintain and replace [ ]] .
      1. Commercial COMPARATOR
         1. The basis of the Commercial Comparator calculation shall be as follows:
         2. The energy demand will be based on the following table (figures expressed in kWh/m2);

|  |  |
| --- | --- |
| Type 1 | [ ] |
| Type 2 | [ ] |
| Type n | [ ] |

* + - * 1. *[Include details of Comparator]*
      1. OTHER CHARGES
         1. The Disconnection Charge at the Commencement Date shall be [ ]. ESCo may change the amount of Disconnection Charge annually on [31 March] in accordance with the respective annual change in [RPI].
         2. The Reconnection Charge at the Commencement Date shall be [ ]. ESCo may change the amount of Reconnection Charge annually on [31 March] in accordance with the respective annual change in [RPI].

1. - Data Processing
   * + 1. DEFINITIONS
          1. In addition to the definitions set out elsewhere in this Agreement, in this Schedule the following words shall have the following meaning:

**Agreed Purposes:** for ESCo shall be to identify, and set up and manage accounts for, tenants of Units, including:

setting up tenants of Unit's accounts and making any changes to the terms of providing the services;

identifying tenants of Units when tenants of Relevant Units makes enquiries;

market research and providing tenants of Units with up-to-date information on the services which ESCo provides;

providing information to tenants of Units about other relevant services provided by ESCo and any Affiliate of ESCo;

billing and debt recovery;

prevention of fraud or loss;

quality assurance (including recording communications with tenants of Units);

checks with credit reference agencies (who will keep a record of the search); and

identifying any vulnerable customers for the purposes of registration on ESCo’s priority services register and access to support services and help.

**Agreed Purposes**: for the the [Registered Provider]/[Landlord] shall be:

to enable the [Registered Provider]/[Landlord] to discharge its obligations under this Agreement;

to enable ESCo to connect the Unit to the Energy System and provide the Heat Supply to the Customer moving into the Unit; and

to enable the Customer occupying the Unit to comply with the terms of their agreement with the Customer and the terms of their Residential Heat Supply Agreement with ESCo.

**Controller, data controller, processor, data processor, data subject, processing and appropriate technical and organisational measures:**shall have the meanings given to them in the Data Protection Legislation in force at the time.

**Permitted Recipients:**means the Parties to this Agreement, any Affiliates of each Party, the employees and contract workers of each Party, any third parties engaged by each Party to perform obligations in connection with this Agreement and credit reference and fraud prevention agencies.

**Shared Personal Data:** means the Personal Data that may be shared between the Parties under this Agreement, which shall be confined to the following categories of information relevant to the following categories of data subject:

Category of data subject: Individuals occupying the Units – including freehold, leasehold and shared ownership tenants (current and outgoing tenants);

Types of personal data: name, address, phone number, heat use data, KYC data (e.g. recent utility bills/ council tax bills).

* + - 1. Shared Personal Data
         1. This paragraph sets out the framework for the sharing of Personal Data between the Parties as data controllers.
         2. Each Party acknowledges that from time to time one Party will need to disclose Shared Personal Data to the other Party as data controller for the Agreed Purposes. The Parties acknowledge that as at the date of this Agreement the Parties do not consider that either of them acts as data processor for the other, and if that changes during the term of this Agreement then they will need to agree a separate data processing agreement as required by Data Protection Legislation. *[Drafting Note: Parties may want to consider provisions regarding control of shared personal data and also the appointment of third party data processors.]*
      2. Particular obligations relating to data sharing
         1. Each Party shall:

ensure that it has any necessary notices and consents are in place to enable lawful transfer of the Shared Personal Data to the other Party and their Permitted Recipients for the Agreed Purposes;

process the Shared Personal Data only for the Agreed Purposes;

not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;

ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

not transfer any Shared Personal Data outside the EEA unless (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer. *[Drafting Note: Parties may want to consider additional obligations regarding data sharing.]*

* + - 1. Mutual assistance
         1. Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each Party shall:

promptly inform the other Party about the receipt of any data subject access request in relation to Shared Personal Data received from the other Party;

provide the other Party with reasonable assistance in complying with any data subject access request in relation to Shared Personal Data received from that other Party;

not disclose or release any Shared Personal Data received from the other Party in response to a data subject access request without first consulting the other Party wherever possible;

assist the other Party, at the cost of the other Party, in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation in relation to Shared Personal Data received from the other Party; and

maintain complete and accurate records and information to demonstrate its compliance with this Schedule.

* + - 1. Indemnity

Each Party shall indemnify the otherfrom and against all Losses suffered or incurred by the other Party and arising out of or in connection with any breach by that Party or any sub-contractors of this Schedule.

1. - Service Standards[[40]](#footnote-41)
2. To the extent that any Failure Event attracts Service Failure Points the levying of such Service Failure Points shall, without prejudice to the provisions of Clause 17(Termination), be the [Registered Provider]/[Landlord]'s sole remedy in respect of such Failure Event.

|  | **Failure Event[[41]](#footnote-42)** | **Service Failure Points[[42]](#footnote-43)** |
| --- | --- | --- |
|  | Failure to provide Heat Supply to the capacity required for more than [ )] consecutive hours (unless ESCo has agreed an alternative timeframe with the relevant Commercial Customer, in which case such alternative timeframe shall apply for that Commercial Customer) | [ ] points per Commercial affected per [ ] hour period |
|  | Failure to provide Heat Supply to the capacity required for more than [ )] consecutive hours | [ ] points per [ ] hour period |
|  | Failure to provide Heat to the capacity required by a Residential Heat Supply Agreement for more than [ )] consecutive hours | [ ] points per Residential Unit affected per [ ] hour period |
| * + - 1. 2. | Failure to provide temporary heaters to Vulnerable Residential Customers where required as per the terms of the Residential Heat Supply Agreement within [ ] hours of notification of the unplanned heat discontinuance or interruption | For every [ ] hour the failure remains unresolved: [ ] points per Vulnerable Residential Customer affected |
| * + - 1. 3. | Failure to respond substantially to a substantiated complaint made in accordance with the Residential Heat Supply Agreement. | [ ] point per complaint |
| * + - 1. 5. | Failure to meet the minimum flow temperatures of [ ] (+/- [ ] ) at a Heat Meter for a period of more than [ ] hours | For each [ ] period of failure: [ ] points, |
| 7. | Failure to remedy a leak from the Heat Distribution Network in a Residential Unit [or Commercial Unit] that is causing material interference or material physical damage to the Unit within [ ] hours of notification. | [ ] points per Unit affected |
| 8. | Failure to remedy a leak in the Heat Distribution Network that is causing material interference with other building services or material physical damage to the Block within [ ] hours of notification, only where and to the extent that such a leak is a result of ESCo’s failure. | [ ] points for every [ ] hour period that fault remains unresolved. |
| 9. | Faulty Heat Meter (i.e. accuracy not within plus/ minus [5%] not replaced within [ ] days after fault identified | [ ] points for each failure |

1. The timescales set out in the table above shall be subject to ESCo being granted the necessary access by the [Registered Provider]/[Landlord] or Customer or tenant or authorised agent of the Customer.
2. If ESCo accumulates [ ] Service Failure Points or more in any calendar month a "**Monthly Service Failure**" shall be deemed to have occurred.
3. Where a Monthly Service Failure has not been triggered, but ESCo accumulates more than [ ] Service Failure Points in a [ ] month period an “**Aggregated Service Failure”** shall be deemed to have occurred[[43]](#footnote-44).
4. ESCo shall within [ten (10)] Business Days of the end of a month in which a Monthly Service Failure or Aggregated Service Failure has occurred, provide to the [Registered Provider]/[Landlord] a rectification plan for the purpose of rectifying the Failure Event(s) which shall include the steps to be taken to rectify the Failure Event(s) and the timetable for rectification.
5. The [Registered Provider]/[Landlord] shall be entitled to review and provide reasonable amendments to the rectification plan provided such amendments are proportionate in the context of the relevant Failure Event(s).
6. If ESCo and the [Registered Provider]/[Landlord] are unable to agree whether any amendments proposed by the [Registered Provider]/[Landlord] are reasonable either Party shall be entitled to refer the matter for resolution pursuant to the provisions of 19 (Dispute Resolution).
7. If ESCo rectifies the Failure Event(s) in accordance with the agreed or determined rectification programme no further action shall be taken by the [Registered Provider]/[Landlord] in respect of the Monthly Service Failure or Aggregated Service Failure and the Monthly Service Failure or Aggregated Service Failure shall be deemed not to have occurred.
8. If:
   1. [ ] or more Monthly Service Failures occur within the same rolling [ ] month period; or
   2. more than [ ] points accrue in relation to Failure Events within any rolling [ ] month period;

(a “**Major Service Failure”)**

the [Registered Provider]/[Landlord] shall be entitled to serve a Notice of Defective Performance and the provisions of Clause 17 (Termination) shall apply.

1. - [Building Heat System, Unit Installations] Heat Meter, HIU, [CIU], [Commercial Unit Heat Exchanger] Exclusions[[44]](#footnote-45)

**Definitions:**

For the purposes of this Schedule 6 the “**Customer**” shall be interpreted as the [Registered Provider]/[Landlord] as the context requires.

1. In relation to ESCo’s obligation to maintain, repair or replace the Customer’s Heat Meter ,HIU, [CIU], [or Commercial Unit Heat Exchanger], ESCo shall be obliged to comply with Clause 8.3 but will not be liable for the following:
   * + - 1. The costs of repairing the Customer’s Heat Meter HIU, [CIU], [or Commercial Unit Heat Exchanger] if the repair is needed because of damage caused by the Customer, or where the work is carried out by someone other than the Customer. In these circumstances ESCo shall be entitled to recover from the Customer any Losses incurred in fulfilling its obligations under Clause 8.3.
         2. Any defect or deficiency or damage to or fault or repair or replacement of any part of the Building Heating System and/or any Unit Installation or any failure to properly operate or maintain the Building Heating System and/or any Unit Installation.
         3. Any loss or damage to property caused as a result of the Building Heating System and/or any Unit Installation breaking or failing, including any cleaning needed, or any damage to the Customer’s belongings, fixtures or furniture, unless the loss or damage is caused by ESCo.
         4. Repairing faults or damage caused by subsidence, structural repairs, accident, fire, lightning, explosion, flood, storm or freezing weather conditions (unless in each such case caused or contributed to by ESCo).
         5. ESCo is unable to gain access to the relevant part of the Customer’s Heat Meter, HIU , [CIU], [and Commercial Unit Heat Exchanger] and costs incurred to gain access to any of these where such access has been obstructed by the Customer or anyone else.
         6. Replacement of any appliances within a Unitunless the loss or damage is caused or contributed to by ESCo.
         7. Upgrades that the Customer may want to have carried out to improve the Customer’s Heat Meter. HIU, [CIU], [or Commercial Unit Heat Exchanger], or the Building Heating System and/or any Unit Installation.
         8. Replacing or repairing parts which do not affect how the Customer’s Heat Meter, HIU, CIU, [Commercial Unit Heat Exchanger], or the Building Heating System and/or any Unit Installation works or performs (for example, any decorative parts).
         9. Resetting the HIU controls such as thermostats or programmers following changes due to Winter periods or Summer periods.
         10. Interruptions to gas, electricity, water or telecommunications utilities needed to operate the Building Heating System and/or any Unit Installation.
         11. The costs of repairing damage or breakdowns caused by changes to or problems with any other energy, gas, water or telecommunications supply services unless and to the extent that such damage is caused or contributed to by ESCo.
         12. Replacing any batteries in any controls that operate the Building Heating System and/or any Unit Installation.
         13. Removing sludge or limescale from the Building Heating System and/or any Unit Installation or any appliance, or repairing damage caused to the Customer’s Heat Meter, HIU, [Commercial Unit Heat Exchanger,] or the Building Heating System and/or any Unit Installation by sludge or limescale, unless the sludge or limescale is ESCo’s fault. Unless ESCo’s fault, ESCo shall be entitled to recover from the Customer any Losses incurred in fulfilling its obligations under Clause 8.3.
         14. The water treatment of any water circuits in the Building Heating System and/or any Unit Installation except where ESCo has drained the Building Heating System and/or any Unit Installation in order to comply with ESCo’s obligations under this Agreement. In these circumstances ESCo shall be entitled to recover from the Customer any Losses incurred in fulfilling its obligations under Clause 8.3.
         15. Interruptions to Heat Supply whilst ESCo repairs or replaces any part of the Customer’s Heat Meter HIU[, CiU, or Commercial Unit Heat Exchanger].
         16. Anyone (other than ESCo) interfering with any part of the Customer’s Heat Meter, HIU [, CIU or Commercial Unit Heat Exchanger].
         17. Dealing with any Emergency (unless caused by ESCo).
         18. Any Force Majeure Event under Clause 13 of this Agreement.
2. - Connection Point Drawings

*[Include appropriate diagram of the point of connection]*

1. - Site

*[Include appropriate site plan for the Block]*

|  |  |
| --- | --- |
| Signed by **[REGISTERED PROVIDER]/ [LANDLORD]** in the presence of: | ....................................... |

.......................................

[SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

|  |  |
| --- | --- |
| Signed by **ESCo** in the presence of: | ....................................... |

.......................................

[SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

1. Insert details of master developer for the Development (i.e. counterparty to the Concession Agreement) [↑](#footnote-ref-2)
2. Include any other properties to which heat is supplied by ESCo – eg schools, community centres etc. [↑](#footnote-ref-3)
3. Include specific reference to the plot/ building of which the [Registered Provider]/Landlord is Landlord as relevant. [↑](#footnote-ref-4)
4. Include for Registered Provider Supply Agreements and for those Landlord Void Supply Agreements where it is commercially agreed that the Landlord will be responsible for in-between void periods. Amend triggers as commercially agreed. [↑](#footnote-ref-5)
5. Relevant to Landlords with Commercial Unit Customers where the Landlord has agreed to be responsible for initial void periods prior to first letting and (where relevant) in-between void periods. [↑](#footnote-ref-6)
6. Insert comparator according to relevant business case/ agreed position. [↑](#footnote-ref-7)
7. Tailor as appropriate to relevant debt recovery process [↑](#footnote-ref-8)
8. Include where it is commercially agreed that a compensation payment should be paid following termination for ESCo default. [↑](#footnote-ref-9)
9. The Expiry Date will need to align with the relevant primary documentation that gives the rights to ESCo to supply Heat– eg Concession Agreement/ Connection Agreement and Framework Supply Agreement. [↑](#footnote-ref-10)
10. Include to the extent that the [Registered Provider]/[Landlord] is subject to FOIA. [↑](#footnote-ref-11)
11. Include where it is commercially agreed that a compensation payment should be paid following termination for [Registered Provider]/[Landlord] default. [↑](#footnote-ref-12)
12. Include the relevant form of Residential Heat Supply Agreement: Social Tenants or Leasehold/ Freehold. [↑](#footnote-ref-13)
13. Note that the Residual Charge equates to the proportion of the Standing Charge legally required to be paid by the Registered Provider as part of its obligations to operate and maintain heat infrastructure serving its tenants]. If Landlords who are not legally obliged to pay such proportion also choose to pay a proportion of their tenants’ Standing Charges amend as appropriate. [↑](#footnote-ref-14)
14. Include where ESCo requires security to be posted in lieu of a sufficient financial standing of the counterparty. [↑](#footnote-ref-15)
15. The date on which Heat Supply is first required by the [Registered Provider]/[Landlord] to the Block/ any Relevant Unit. [↑](#footnote-ref-16)
16. Amend as appropriate [↑](#footnote-ref-17)
17. Include clause 3.5.3 where the Registered Provider wishes to have some control over when their tenants are disconnected for non-payment and Pre-Payment meters are not installed as standard in Social Housing units. [↑](#footnote-ref-18)
18. Include where the Registered Provider wishes to have some control over when their tenants are disconnected for non-payment and Pre-Payment meters are not installed as standard in Social Housing units. [↑](#footnote-ref-19)
19. Include clause 4.3 – 4.4 where the Landlord is (as relevant) responsible for Between Void Periods during short hold tenancies (under 7 years is a common term) but not responsible for Units (Commercial/ Residential) subject to long leases/ following freehold sales. [↑](#footnote-ref-20)
20. Note that these access provisions assume that the Landlord (or the relevant superior Landlord) has included in their relevant tenancy and lease agreements appropriate restrictions relating to access granted to the benefit of ESCo. This is covered in the Connection [and Supply] Agreement and in summary is as follows:

    * 1. *Subject to [exceptions to exclusivity] the Landlord shall include within the leases of Residential Units or Commercial Units that it is a party to within the Block, appropriate provisions so as to:*
         1. *impose an obligation on the relevant tenant or lessee to allow ESCo access to the relevant Residential Unit or Commercial Unit for the purpose of carrying out its obligations under this Agreement to the extent that it is not reasonably possible for ESCo to perform such obligations without access to such premises subject to ESCo agreeing to make good any damage caused by such access to the reasonable satisfaction of the Landlord or relevant tenant or lessee;*
         2. *allow ESCo to enforce the obligations in Clause [1.1] under the Contracts (Rights of Third Parties) Act 1999.*

    [↑](#footnote-ref-21)
21. These provisions may instead be covered under a Framework Supply Agreement/ Concession Agreement, particularly where the controls over pricing are governed across the whole Development and not on a Block by Block basis. [↑](#footnote-ref-22)
22. For commercial agreement as to whether Heat Trust standards are required for Commercial Customers. [↑](#footnote-ref-23)
23. Align with relevant billing year [↑](#footnote-ref-24)
24. Include any other relevant information [↑](#footnote-ref-25)
25. Include where the Registered Provider/ Landlord is responsible for Between Tenancy Void periods. [↑](#footnote-ref-26)
26. Include where the Registered Provider/ Landlord is responsible for Between Tenancy Void periods. [↑](#footnote-ref-27)
27. Include where the Registered Provider/ Landlord is responsible for Between Tenancy Void periods. [↑](#footnote-ref-28)
28. Include where it is commercially agreed that the [Registered Provider]/[Landlord] is no longer responsible for Voids following notification of an incoming tenants’ details. Note that alternative splits of liability may be agreed in relation to Voids, eg, ESCo taking risk in relation to the first month of an Initial Void and three months in relation to a Between Tenancy Void (or ESCo taking all risk in relation to Between Tenancy Voids). [↑](#footnote-ref-29)
29. Amend as appropriate, given commercial agreement/ specific arrangements regarding Tertiary Network build timing/ requirements, etc. [↑](#footnote-ref-30)
30. Dependent on commercial arrangements regarding Commercial Unit Heat Exchangers. [↑](#footnote-ref-31)
31. Include obligations as agreed, depending on the level of transparency required. [↑](#footnote-ref-32)
32. Period for commercial agreement. [↑](#footnote-ref-33)
33. Include if commercially agreed to require. [↑](#footnote-ref-34)
34. Include where it is commercially agreed that compensation should be due from the defaulting party on termination. [↑](#footnote-ref-35)
35. Drafting included on the basis that this Agreement is tied to the Concession Agreement and any transfer/ novation by ESCo must align with the Concession Agreement. [↑](#footnote-ref-36)
36. Include where the variable unit heat pricing is benchmarked as against a comparator with alternative forms of heating. Parties may also want to consider alternative comparators to show more cost reflective pricing for district heating schemes. [↑](#footnote-ref-37)
37. Insert relevant details re components of the Energy System covered by the Standing Charge, bearing in mind Landlord and Tenant Act. [↑](#footnote-ref-38)
38. Insert comparator. [↑](#footnote-ref-39)
39. It is assumed that charges will be varied under the Concession and rolled out across the Development, rather than any Landlord/ Plot Developers having the discretion to agree variations to such charges. [↑](#footnote-ref-40)
40. Suggested KPIs only. These should follow the Registered Provider]/[Landlord]'s requirements vs ESCo’s relevant business models and relevant negotiations. [↑](#footnote-ref-41)
41. Align with thresholds set out under Customer Supply Agreements [↑](#footnote-ref-42)
42. Consider any arrangements for capping to avoid hair trigger escalation of points (eg, to a certain number of points where all units are served by the same Substation) and for avoidance of double counting for trigger purposes (eg between failure to supply heat and for failure to respond to complaints). [↑](#footnote-ref-43)
43. Calibrate points such that this captures systemic failures that are not sufficiently acute to trigger a Monthly Service Failure. [↑](#footnote-ref-44)
44. Review and add to/ exclude the below as appropriate to the services that the heat supplier intends to provide [↑](#footnote-ref-45)