**DATED [ ]**

**[ESCo]**

**and**

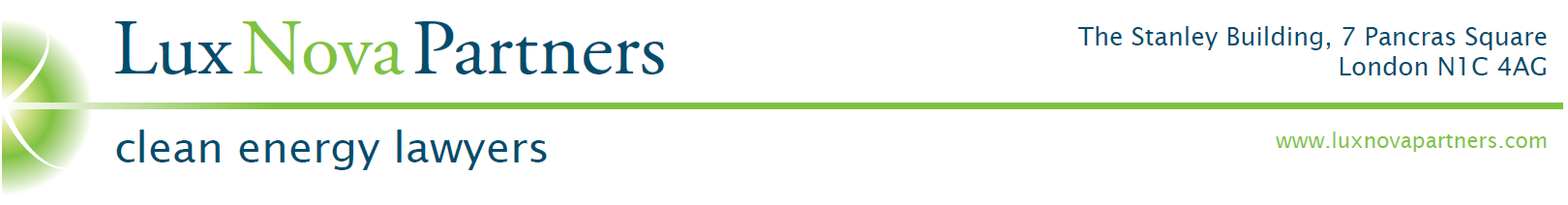
**[CUSTOMER]**

**HEAT NETWORKS INVESTMENT PROJECT**

**DRAFT:COMMERCIAL HEATING SUPPLY [and Electricity Supply] AGREEMENT**

**for Heat Supply [and Electricity Supply] to**

**[ ]**



**Version Control**

|  |  |  |  |
| --- | --- | --- | --- |
| **Version number** | **Date of issue** | **Comment** | **Author** |
| 1.0 | March 2019 | Issue for BEIS review | Lux Nova Partners |
| 2.0 | 31.07.19 | Draft for focused consultation | Lux Nova Partners |
| 3.0 | 16.10.19 | Marked up following responses to consultation meeting on 19.09.19 | Lux Nova Partners |
| 4.0 | 13.12.19 | Marked up after responses to wider consultation which closed on 17.11.19 | Lux Nova Partners |
| 5.0 | 15.1.2020 | Marked up for further amendments by Lux Nova Partners and BEIS | Lux Nova Partners |

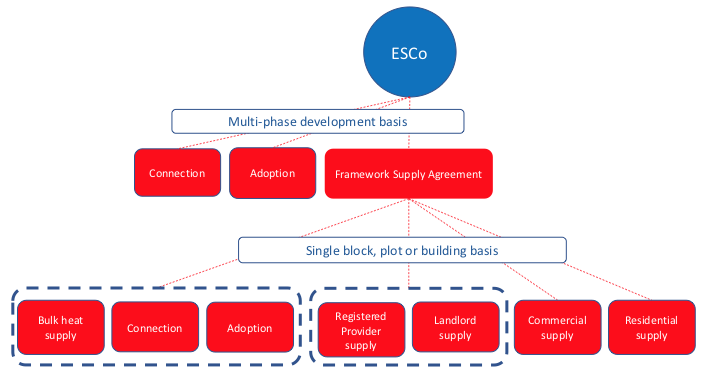
***GUIDANCE NOTE:***

*This (Small) Commercial Supply Agreement is not relevant to every district heating scheme.*

*However, it may be relevant where ESCo is to supply heat to smaller customers, especially where connected with similar HIUs to residential units. ESCo may also supply electricity to such customers.*

*Consequently, it follows a similar format and content to a residential heat supply agreement.*

*It may be entered into in a straightforward ESCo – commercial customer setting. It may also fit into more complex, multi-phase developments settings, illustrated in the following diagram:*



*The structuring assumption and risk allocation underlying this (small) Commercial Heat Supply 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 very likely that this template (small) Commercial Heat Supply 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. Public sector bodies should take into consideration any public accounting impacts when entering into agreements.*

*THIS DOCUMENT IS RELEASED TO BE USED AS A DRAFTING TEMPLATE, TAILORED AND DEVELOPED FURTHER FOR THE SPECIFICS OF THE PARTICULAR PROJECT.*

*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.*

*[Drafting Note: The inclusion of a table at the front of this agreement will make it easier to obtain key details from the customer. Tailor as appropriate: form/branding/using preferred language.]*

**Commercial Heating Supply Agreement**

**Contract Particulars**

|  |  |
| --- | --- |
| ESCo | [ ], company number [ ] and having its registered office address at [ ] |
| Customer |  |
| Description of Development |  |
| Address of Customer’s Premises (including postcode) |  |
| Billing Address (leave blank if this is the same as the Supply Address) |  |
| Customer Contact Details | Telephone:  Mobile:  Email: |
| [Initial Heat Supply][Electricity Supply] |  |
| [Declared Maximum Heat Capacity] [Maximum Electricity that can be supplied] |  |
| [District Heating Scheme Extension] |  |
| [Sub-Metering] |  |
| [Connection Charge (if applicable)] |  |
| Charges | Standing Charge: Variable Charge: |
|  | Electricity Charge: |
| Heat Exchanger |  |
| Supply Start Date |  |
| Customer Enquiries |  |
| Emergency Reporting |  |
| Signed by Customer | Sign Print Name Date |
| Signed by ESCo | Sign Print Name Date |

**CONTENTS PAGE**

**Clause Description Page No:**

[1 Definitions and interpretation 1](#_Toc26281866)

[2 Provision of heat [and electricity] 6](#_Toc26281867)

[3 Standards of Service 6](#_Toc26281868)

[4 Charges and Billing 7](#_Toc26281869)

[5 Payment 8](#_Toc26281870)

[6 Meter readings 8](#_Toc26281871)

[7 Failing to pay 9](#_Toc26281872)

[8 Reconnecting the customer’s supply 9](#_Toc26281873)

[9 Operating and maintaining equipment 10](#_Toc26281874)

[10 Access, emergencies and planned maintenance 12](#_Toc26281875)

[11 Termination 13](#_Toc26281876)

[12 Consequences of terminating this contract 14](#_Toc26281877)

[13 Force Majeure 14](#_Toc26281878)

[14 Limit of liability 15](#_Toc26281879)

[15 Dispute Resolution Procedure 15](#_Toc26281880)

[16 Confidentiality 16](#_Toc26281881)

[17 Data Protection 18](#_Toc26281882)

[18 Variation 18](#_Toc26281883)

[19 Notices 18](#_Toc26281884)

[20 Subcontracting and transfers 19](#_Toc26281885)

[21 General 19](#_Toc26281886)

[Schedule 1](#_Toc26281887)

[ESCo’s charges 21](#_Toc26281888)

[Schedule 2](#_Toc26281889)

[Performance indicators 23](#_Toc26281890)

[Schedule 3](#_Toc26281891)

[Point of connection 25](#_Toc26281892)

[Schedule 4](#_Toc26281893)

[Premises Heating System, HIU and heat meter [and electricity meter] exclusions 26](#_Toc26281894)

**COMMERCIAL HEATING SUPPLY AGREEMENT**

DATE 20[ ]

PARTIES

1. [ *Commercial Customer* ] (incorporated and registered in England and Wales under company registration number [ ], the registered office of which is at [ ](“**customer**”); and
2. [ *ESCo]* (incorporated and registered in England and Wales under company registration number [ ], the registered office of which is at [ ] (“**ESCo**”);

(together the “**parties**”)

BACKGROUND

1. **ESCo** operates the **district heating scheme**, which produces the **heat supply** (in the form of hot water) to provide heating and hot water [and also the **electricity supply** to provide **electricity**] to the **customer’s premises**.
2. The customer’s premises is part of the development which has been connected to the district heating scheme.
3. **ESCo** has agreed with the **customer** to provide **heat supply [**and **electricity supply]** from the district heating scheme to the **customer’s premises** on the terms set out in this **contract (**which includes the **contract particulars).**

IT IS AGREED AS FOLLOWS

1. Definitions and interpretation
   1. In this **contract** defined terms (identified in bold text) are as follows:

abortive call-out charge

The charge the **customer** will be obliged to pay if access is not granted to the **premises** at times pre-arranged in accordance with Clause 9.4.

annual statement

The statement provided annually to the **customer**, giving relevant details including use of the **heat supply** [and **electricity supply**] over the previous year (expressed in kWh) and the **billing information.**

authorisation

Means an authorisation, consent, permission, approval, resolution, licence, exemption, filing, notarisation or registration.

back-bill

A ‘catch-up’ **heat bill** [**energy bill**] to reconcile charges for the **heat supply [**and **electricity supply]**.

billing information

information including current **charges,** andwhere available, comparisons of the customer’s **heat supply [**and **electricity supply]** against the previous year.

billing period

means the period of [1 month] *[Drafting Note: Amend according to proposed billing structure.]*

business day

means a day other than a Saturday, Sunday or a bank holiday in England [or Wales].

charges

These are:

* the **standing charge**;
* the **variable charge**;

[the **electricity charge**]

* any reasonable and proper **reconnection charges**, **abortive call-out charges** and **debt-processing charges**; and
* any other amounts **ESCo** is entitled to charge under this **contract**.

confidential information

means all information marked as confidential or which should reasonably be regarded as confidential in whatever form and of whatever nature received or obtained as a result of entering into or performing this contract, including any information regarding the business, customers, know-how or financial or other affairs, commercially sensitive information, trade secrets, intellectual property and all personal data (within the meaning of **data protection legislation**) of the other **party** and which arises out of or relates to:

1. the negotiations concerning this **contract**;
2. the provisions of this **contract**; or
3. the subject matter of this **contract**.

contract

This **contract** including the **contract particulars** any schedules referred to herein.

contract particulars

Means the particulars relating to this contract set out in the document headed “Contract Particulars” and attached to this contract, and which forms part of this contract.*[Drafting Note: Alternatively, this could be included as a Schedule.]*

customer handbook

The handbook setting out **ESCo**’s complaints procedure.

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, 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).

debt-processing charge

The cost charged for recovering overdue **charges** as set out in Schedule 1.

development

Has the meaning given in the **contract particulars** .

district heating scheme

Means the heating network pipes, [**electricity network**,]heat [and **electricity**] generation equipment and plant, the [heat meter and the HIU [and the **electricity meter**]] *[Drafting Note: It is assumed that the HIU and the heat meter within the units will form part of the district heating network and be owned by and/or operated and maintained by* ***ESCo*** *However, the customer’s landlord and ESCo may agree that the landlord will own and be responsible for the heating system inside the building from the building connection point to the customer’s premises heating system. Stakeholders to consider how secondary network losses will be assessed and how customers will be compensated for these.]* used to provide the **heat supply [**and **electricity supply]** to the **premises’ heating system.**

due date

Means as defined in Clause 5.1.

[electricity charge

Means the charge set out in Schedule 1.]

[electricity meter

Means the meter at the customer’s premises used to measure the electricity supply made by ESCo via the electricity network to the customer’s premises.]

[electricity network

Means the private network of wires and ancillary plant and equipment to enable the supply of electricity from the **district heating scheme** to the **customer’s premises**.**]**

[electricity supply

Means the supply of electricity by **ESCo** to the **customer’s premises** enabled over the **electricity network**.**]**

emergency

An incident caused by or affecting the district heating scheme which is causing or likely to cause a serious risk of personal injury or serious damage to property and/or loss of heating and hot water to multiple premises.

force majeure event

means:

1. war, civil war, armed conflict or terrorism; or
2. nuclear contamination unless in any case **ESCo** or the **customer** is the source or cause of the contamination; or
3. chemical or biological contamination of the **district heating scheme** and/or the **development** from any of the events referred to in paragraph (a) above; or
4. pressure waves caused by devices travelling at supersonic speeds, which directly causes either **party** to be unable to comply with all or a material part of its obligations under this contract. [*Drafting Note: Parties to consider whether they want to specify further FM circumstances.]*

good industry practice

Means using the standards, practices, methods and procedures which comply with the **law** and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

heat bill [energy bill[[1]](#footnote-2)]

A bill issued at regular intervals in accordance with Clause 4.

heat meter

The meter located within the **HIU** to measure the amount of **heat supply** provided to the **point of connection.**

heat supply

The supply of hot water from the **district heating scheme** delivered to the **HIU** within the **premises** for the purposes of providing heating and hot water.

HIU

The unit in the premises that transfers heat from the **district heating scheme** to the **premises’ heating system**.

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 **contract**.

invoice date

Means the date falling on or after the last **business day** of the **billing period**.

law

Any reference to **law** includes:

* any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
* any applicable act, regulation, guidance, direction or determination with which the **customer** or **ESCo** is bound to comply to the extent that the same are published and publicly available or the existence or contents of the same are available in draft form.
* any applicable judgement of a relevant court of law which is binding in England or Wales (as applicable).

performance indicators

Means the performance indicators as set out in Schedule 2.

planned interruption

An interruption, discontinuance or reduction in **heat supply** [and **electricity supply**] where at least 48 hours’ written notice has been given of such interruption, discontinuance or reduction.

point of connection

Means the demarcation point set out in the drawing at Schedule 4.

premises

Means the unit to be provided with the **heat supply** [and **electricity supply**] as identified in the **contract particulars.**

premises’ heating system

The heating system inside the **premises**, including all pipes, radiators, hot-water cylinders, thermostats, timers and other relevant apparatus (but not including the **meter** or the **HIU**) which the **customer** is responsible for.

recognised investment exchange

has the meaning given to it in section 285 of the Financial Services and Markets Act 2000.

reconnection charge

The charge for reconnecting the **heat supply** [and **electricity supply**] to the **premises** after suspension in accordance with Clause 7.

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 or of the European Union which has jurisdiction arising out of or in connection with the **development** and/or the **district heating network**.

service failure

Means a failure to meet a **performance indicator** as set out under Schedule 2.

service-failure payment

The compensation required to be paid for a **service failure**, as set out in Schedule 2.

standing charge

A charge which covers the costs of maintaining and repairing the **district heating scheme**, and making a **heat supply** available.

summer period

Means the period starting 1st June and ending 30th September each year.

supply start date

Means the date set out in the **contact particulars**.

unplanned supply interruption

An interruption in the **heat supply** [and **electricity supply**] where less than 48 hours’ notice has been given.

variable charge

The charge for each unit (kWh) of **heat supply** used.

winter period

Means the period starting 1st October and ending 31 May each year.

* 1. In this **contract** any reference to:
     1. a statute or statutory provision includes a reference to:
        + 1. any statutory amendment, consolidation or re-enactment of it to the extent in force from time to time;
          2. all orders, regulations, instruments or other subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) made under it to the extent in force from time to time; and
          3. any statute or statutory provision of which it is an amendment, consolidation or re-enactment;
          4. a Clause or Schedule is to a Clause of or schedule to this **contract** and any reference to this **contract** includes its Schedules;
          5. a Paragraph is to a paragraph in a Schedule and, where no specific Schedule is mentioned, to the Schedule in which the reference is located;
          6. any agreement (including this **contract**) or other document or the provisions of them is a reference to that agreement, document or provision as amended, novated, supplemented, extended, restated or replaced from time to time;
          7. a “person” includes a legal or natural person, partnership, association, trust, company, corporation, joint venture, government, state or agency of the state or other body; and
          8. a governmental, local governmental, regulatory or administrative authority or agency includes its successors.
  2. In this **contract** the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.

1. Provision of heat [and electricity]
   1. **ESCo** shall provide the **heat supply** to the **premises' heating system [**and **electricity supply** to the **customer’s premises]** from the **supply start date** until the date this **contract** terminates, subject to and in accordance with the terms set out in this **contract**.
   2. Without prejudice to Clause 2.1, **ESCo** shall make the **heat supply** [and **electricity supply**] available to the **customer:**
      * 1. so as to avoid any interruptions to the **heat supply** [and **electricity supply**] to the **customer,** subject to Clauses 7, 9, 10, 11 and 13;
        2. in accordance with **good industry practice**;
        3. in accordance with all **laws** and other statutory requirements;
   3. The **customer** acknowledges that the **development** has been designed and built for heating [and electricity] to be provided through the **district heating scheme**. The **customer** agrees not to obtain heating or hot-water supplies [and also **electricity supply**] from any other source during the term of this **contract**, except when the **heat supply** [or **electricity supply**] to the **premises** is interrupted or suspended (other than where **ESCo** has suspended the **heat supplies [**or **electricity supply]** pursuant to Clause 7).
   4. **[ESCo** represents and warrants that it and its intended electricity supply qualifies for exemption from the requirement to hold a licence to supply electricity under the Electricity Act 1989 (as amended). **ESCo** shall ensure that it does not connect or permit to be connected to the **electricity network** any **customers** that would render it ineligible for exemption from the requirement to hold a licence to supply electricity under the Electricity Act 1989.]*[Drafting Note: Parties to consider any further amendments where ESCo is also providing electricity supply].*
2. Standards of Service
   1. Subject to Clause 3.2, **ESCo** shall make the **heat supply** [and **electricity supply**] available to the **customer** at all times, in line with the **performance indicators** set out under Schedule 2.
   2. The **customer** acknowledges that the **heat supply** [and **electricity supply**]may be interrupted or suspended in certain circumstances. If the **heat supply** [and/or **electricity supply**] is interrupted or suspended which results in a **service failure**, the **customer** shall be eligible for compensation in the form of a **service-failure payment**.
   3. If there is a fault with the **heat supply** [and/or **electricity supply**] to the **premises** or the **heat supply** [and/or **electricity supply**] is interrupted (other than a **planned interruption)** the **customer** shall notify **ESCo** as soon as reasonably practicable.
3. Charges and Billing
   1. The **charges** as at the date of this **contract** are set out under Schedule 1 and shall be payable by the **customer** in accordance with the terms of this **contract.**
   2. The **charges** shall be reviewed annually and shall be adjusted on [1 April] *[Drafting note: Align with ESCO’s billing year]* in line with inflation and in accordance with Schedule 1. *[Drafting Note: Consideration will need to be given to changes in law which could lead to increases or decreases in heat [and electricity] 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.]*
   3. **ESCo** shall issue a **heat bill** [an **energy bill**] in respect of each **billing period** on [or after] the **invoice date,** setting out:
      * 1. The **premises** to which the **heat bill** [**energy bill**]is applicable;
        2. The **billing period**;
        3. The **standing charge** payable in advance *[Drafting Note: It is assumed that standing charges will be charged in advance: amend as appropriate]*;
        4. The **variable charge**, based on:

the amount of **heat supply** delivered to the **connection point** in the previous **billing period**, as measured by the **heat meter** inside the **HIU** or based on a reasonable estimate pursuant to Clause 6.3; and

the price per kWh of **heat supply**

[the amount of **electricity supply** delivered to the **customer’s premises** in the previous **billing period** as measured by the **electricity meter** or based on a reasonable estimate pursuant to Clause 6.3 and the price per kWh of **electricity supply**]

* + - 1. Any applicable VAT;
      2. Any amounts to recover underpayments or overdue **charges** in accordance with Clause 7;
      3. Any reasonable and proper costs or charges arising from loss or damage suffered by **ESCo** as a result of the **customer’s** breach of this **contract**;
      4. Any other costs or charges properly due under this **contract**;
      5. Any amounts refunded or any **service-failure payment** paid following a **service failure**, set out in Schedule 2;
      6. The balance of the **customer’s** account;
      7. On a [quarterly]/[bi-annual] basis, the **billing information;**
      8. *[Drafting Note: Include any other relevant information.]*
  1. Where the **heat bill** [**energy bill**] is based on an estimate of the **heat supply** [and/or **electricity supply**] delivered, **ESCo** shall make any necessary adjustments after the next accurate **heat meter** reading and shall debit or credit the **heat bill** [**energy bill**] for the next **billing period**.
  2. Where there has been undercharging for the **heat supply [**and/or **electricity supply]** delivered**, ESCo** may issue a **back-bill** or reconcile the undercharging by applying a debit on the **customer’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.
  3. The **customer** shall notify **ESCo** as soon as reasonably practicable (and in any event within [five (5)] **business** days) if the **customer** disputes an [estimated] **heat bill** [**energy bill**] *[Drafting Note: ESCo may wish to limit heat bill [energy bill] disputes only to circumstances where the bill is derived from an estimate.]*
  4. If the **customer** has not signed a contract with **ESCo** or if the **contract** that **the customer** has signed has ended but the **customer** is using the **heat supply** [and/or **electricity supply**] (for example where **it** has moved into a property where **ESCo** already provides the **heat** **supply** [and/or **electricity supply**]), the **customer** will be deemed to have agreed to have accepted these terms of this **contract**.

1. Payment
   1. The **customer** must pay the amount set out in the **heat bill** [**energy bill**] within [twenty one (21)] days from the date of the **heat bill** [**energy bill]** (the “**due date**”)**.**
   2. The **customer** shall be responsible for paying the **charges** for the **heat supply** [and/or **electricity supply**] until:
      * 1. termination of this **contract** pursuant to Clause 11; or
        2. suspension of this **contract** pursuant to Clause 7.1.
   3. Where the **contract** has not been terminated, responsibility for paying the **charges** shall continue notwithstanding that:
      * 1. **heat supply** [and/or **electricity supply**] is consumed at the **premises** without the **customer’s** permission; or
        2. the **customer** does not consume the **heat supply** delivered to the **point of connection** (in which case the **standing charge** only shall be due).

[the **customer** does not consume the **electricity supply** delivered to the **customer’s premises**.]

* 1. The **customer** shall remain liable to pay **charges** where the **heat supply** to the **point of connection** is interrupted or unavailable. If the interruption or unavailability is due to a **service failure**, the **customer** shall be entitled to a **service-failure payment** as set out under Schedule 2. *[Drafting Note: Parties to agree position regarding electricity charges where electricity supply is interrupted].*
  2. If the **customer** fails to pay the **charges** by the **due date**, **ESCo** reserves the right to charge interest at a rate of [*Drafting Note: Insert relevant rate* *]* per annum.

1. Meter readings
   1. The **heat bill** [**energy bill**] shall show the amount of **heat supply** delivered to the **point of connection**, [and **electricity supply** delivered to the **customer’s premises**] which shall be recorded by the **heat meter** [and the **electricity meter** respectively,]and the automated meter-reading system. Where possible **ESCo** shall read the **heat meter** [and **electricity meter**] remotely every month without requiring access to the **premises**. If **ESCo** is unable to read the **heat meter** [and **electricity meter**] remotely, **ESCo** shall, where possible, provide the **customer** with the means to provide **ESCo** with reading(s).
   2. If **ESCo** has not been able to read the **customer’s** **heat meter** [and/or **electricity meter**] because of a fault in **ESCo’s** automated meter-reading system; the **customer** has not been able to give **ESCo** the **customer’s** own readings, or **ESCo** has reason to believe that the **customer’s** **heat meter** [and/or **electricity meter**] is not reading correctly, **ESCo** may send the **customer** a **heat bill** [**energy bill**] and the **customer** must pay **ESCo** on the basis of **ESCo’s** reasonable estimate of the amount of **heat supply** [and **electricity supply**] used.
   3. **ESCo’s** reasonable estimates will be based on the current **standing charge** and **variable charge** [and **electricity charge**] and either:
      * 1. the **customer’s** pattern of energy use in the past; or
        2. the **heat supply** [and **electricity supply**] the **customer** is likely to use given the size of **the premises** and comparison readings from other similar properties.
   4. If the **customer** believes that the **heat** **meter** [and/or **electricity meter**] in the **premises** is faulty, the **customer** must notify **ESCo** as soon as possible in order that **ESCo** can arrange a check as set out under Clause 9.
   5. If the **customer** requests **ESCo** check the **customer’s** **heat** **meter** [and/or **electricity meter**] and ESCo finds that it is accurate, the **customer** may be required to pay **ESCo’s r**easonable costs of checking the **heat** **meter** [and/or **electricity meter**].
   6. **ESCo** may also ask to check the **customer’s** **heat** **meter** [and/or **electricity meter**] at any time if **ESCo** believes that it is not accurate. The **customer** will not be required to pay any costs if **ESCo** requests to check the **customer’s** **heat** **meter** [and/or **electricity meter]** unlessthe **customer** has damaged the **heat meter** [and/or **electricity meter**].
2. Failing to pay
   1. If the **customer** fails to pay the **heat bill** [**energy bill**] by the **due date, ESCo** may undertake any of the following actions:
      * 1. ask the **customer** to pay by another method;
        2. charge the customer interest on the overdue amount at a rate of [ ];
        3. request a refundable deposit equivalent to **ESCo’s** reasonable estimate of the **charges** for a period of [three (3) calendar months];
        4. if the customer pays by direct debit, increase the amount debited from its bank account so that **ESCo** can recover the difference over a period that is reasonably acceptable to **ESCo**;
        5. request a guarantee for the **customer’s** payments;
        6. take court action to recover the debt and **ESCo’s** costs;
        7. as a last resort, suspend or disconnect the **customer’s** **heat supply [**and/or **electricity supply]**.
   2. Before **ESCo** suspends or disconnect the **customer’s** **heat supply** [and/or **electricity supply**] **ESCo** shall:
      * 1. send the **customer** at least two reminder letters; and
        2. use reasonable endeavours to contact the **customer** by phone at least twice.
   3. **ESCo** may charge the **customer** a **debt-processing charge** to cover **ESCo’s** reasonable costs of sending the reminder letters and taking action to collect the overdue **charges**.
3. Reconnecting the customer’s supply
   1. Where **ESCo** has suspended or disconnected the **customer’s** **heat supply** [and/or **electricity supply**]for non-payment, **ESCo** shall within [four (4)] working hours, make the **heat supply** [and/or **electricity supply**] available to the **customer** if the **customer** has paid to **ESCo**:
      * 1. all charges and amounts the customer owes to **ESCo** including the reconnection charge and debt-processing charge, in full; and
        2. a refundable deposit equal to **ESCo’s** reasonable estimate of [three (3) months’] **charges**.
   2. If the **customer** pays **ESCo** a deposit, **ESCo** shall return that deposit once the **customer** has kept the **customer’s** payments up to date, in full, for [twelve (12)] months.
4. Operating and maintaining equipment

ESCo’s responsibility

* 1. **ESCo** shall be responsible for:
     + 1. routinely inspecting, maintaining, repairing or replacing (if necessary) the **HIU**; and
       2. routinely inspecting, maintaining, repairing and replacing (if necessary) the **heat meter** [and the **electricity meter**];
       3. in line with **good industry practice**, at **ESCo’s** cost (except in the circumstances set out in Schedule 4, when **ESCo** will not be liable ).

**ESCo** is not responsible for the **premises’ heating system**.

* 1. If the **customer** reports a problem with the **customer’s** **heat supply, [electricity supply,] heat meter** [**electricity meter**] or **HIU**, **ESCo** shall attendthe **premises** to address the problem within the following timescales:

*[Drafting Note: Alter according to ESCo’s business plan/ as viewed appropriate for the relevant commercial customer. Parties to consider/agree whether this clause 9.2 also applies in the event the customer reports a problem with its electricity supply.]*

|  |  |
| --- | --- |
| Situation | Response time |
| An **emergency** | Within [four (4)] hours |
| No **heat supply** [and/or **electricity supply**] | Within [twenty four (24)] hours |
| An inadequate **heat supply** [and/or **electricity supply**]or a minor leak that will not cause damage | Within [twenty four (24)] hours (provided that hours outside of **business days** shall be discounted) |
| Problems with the customer’s **heat meter** [and/or **electricity meter**] | Within [twenty four (24)] hours (provided that hours outside of **business days** shall be discounted) |
| Any other problems | Within [forty eight (48)] hours (provided that hours outside of **business days** shall be discounted) |

* 1. In each case, **ESCo** will use all reasonable efforts to attend the **premises** and repair the problem. However where **ESCo** needs a part to repair the fault, and that part is not available at the time **ESCo** comes to the **premises**, **ESCo** shall arrange a future visit at an agreed time.

Agreeing an attendance time

* 1. Where **ESCo** needs to undertake routine inspections, maintenance, repairs or replacement, **ESCo** shall give the **customer** at least [three (3)] **business days’** notice of any such visit and shall use reasonable endeavours to arrange the visit at a mutually convenient time. **ESCo** will provide the customer with a maximum [four (4)] hour time window for attending the **premises** on the agreed day. The **customer** must provide **ESCo** with access to the **premises** during this agreed time window.
  2. Where the **customer** reports a problem with the **customer’s** **heat supply, [electricity supply] heat meter** **[electricity meter]** or **HIU, ESCo** shall agree a [four (4)] hour time window (within the periods for responding above) for attending the **premises**. The **customer** must provide **ESCo** with access to the **premises** during this agreed time window.
  3. **ESCo** shall not be obliged to keep to the response times agreed above if the **customer** does not permit **ESCo** access to the **premises** to resolve the issue.

The customer’s responsibility

* 1. The **customer** must ensure that the **premises' heating system** is maintained, repaired and, where necessary, replaced.
  2. **ESCo** is not liable for the cost of replacement or repairs of any part of the **premises' heating system**, or for any failure of or problems with the **premises' heating system**, unless the problem or failure has been caused by **ESCo**.
  3. If the state of the **premises' heating system** is causing problems, or **ESCo** believes that it is likely to cause problems, to the **district heating scheme**, the **heat meter** or the **HIU**, **ESCo** may suspend the **heat supply** until the **customer** repairs or replaces the **premises heating system** to the standard reasonably required by **ESCo**.
  4. The **customer** must notify **ESCo** of any proposed significant change to the **premises’ heating system** or anything else that could affect the **district heating scheme** or require alterations to **the premises’ heating system** or its connection with the **district heating scheme** or impact on **heat supply.** If the **customer** causes (or any person living with or visiting the **customer** causes) any damage to, or interrupts, discontinues or reduces the operation of the **district heating scheme**, the **heat meter** or **HIU**, by any work that the **customer** does to the **premises’ heating system**, the **customer** shall be required to pay **ESCo’s** costs of undertaking any necessary repairs, replacements or maintenance arising from such damage or impacts on operation.
  5. The **customer** must not (and must not allow any other person living with or visiting **the premises** to):
     + 1. tamper with or damage the **district heating scheme**, the **heat meter** [the **electricity meter**] or the **HIU** (including, for example, through vandalism, misuse or interference);
       2. misuse the **premises’ heating system** such that it causes any damage to the **district heating scheme**, the **heat meter**, or the **HIU.**

If the **customer** does so, or allows any other person visiting the **premises** to do so, the **customer** must pay **ESCo’s** costs of undertaking any necessary repairs, replacements or maintenance arising from such damage.

* 1. The **customer** must notify **ESCo** immediately if the **customer** knows or believes that:
     + 1. any part of the **district heating scheme**, [**electricity network**] the **heat meter** [the **electricity meter**] or the **HIU** is damaged or destroyed; or
       2. anyone other than the **customer** or **ESCo’s** agents has interfered with or removed the **heat meter** or the **HIU**.
  2. **ESCo** shall not carry out any repairs or maintenance in the **premises** if **ESCo** has good reason to believe that there is a health-and-safety risk, including the risk from dangerous materials, infestations or harassment to **ESCo’s** staff (including any verbal or physical abuse or threat of physical abuse). *[Drafting Note: Parties to consider who will have responsibility for the maintenance of electrical wiring within the customer’s premises and liability where the customer cannot take electricity supply due to electrical wiring within the premises, where changes etc. made to such wiring can affect the district heating system/electricity network. ].*

1. Access, emergencies and planned maintenance
   1. The **customer** must give **ESCo** and **ESCo’s** officers and agents safe access to the **premises**, at all reasonable times, for the purposes of:
      * 1. inspecting, repairing, replacing, installing, removing, testing, maintaining, or carrying out other activities relating to the **meter**, **heat meter** [the **electricity meter**] or **HIU**.
        2. disconnecting the **heat supply** to the **premises' heating system** in the circumstances permitted under this **contract**[and/or the **electricity supply** to **the premises** in circumstances permitted under **this contract**];
        3. terminating this **contract**;
        4. in an **emergency**, or to mitigate any danger **ESCo** reasonably believes exists to people or property in relation to the **district heating scheme.**

**ESCo** shall ensure that anyone attending the **premises** for the purposes above will carry an ID card which includes a colour photograph, their name and contact details the **customer** can use to check their identity.

* 1. Except in an **emergency** or where **ESCo** reasonably believe there is a danger to people or a danger to property, or **ESCo** is required by **law**, or this **contract** obliges **ESCo** to obtain access sooner, **ESCo** will give the **customer** at least:
     + 1. [seven (7)] days’ notice in respect of planned routine maintenance;
       2. [72] hours’ notice in all other circumstances

prior to requiring access to the **premises**.

* 1. If **ESCo** agrees and confirms a time with the **customer** for **ESCo** to visit the **premises** for any purpose relating to this **contract**, and:
     + 1. the **customer** does not give **ESCo** access at the agreed time (or rearrange with **ESCo** a different time giving **ESCo** at least [four (4) hours] notice; and
       2. **ESCo** can evidence that they could not gain access (e.g. a time stamped photograph of the front of the **premises** and a call logged that the **customer** was called at the agreed and confirmed time of the appointment):

an “**abortive visit**” will have occurred.

* 1. Where **ESCo** makes more than one **abortive visit** to the **premises** in respect of the same issue, the **customer** shall be required to pay **ESCo** an **abortive call-out charge** for each subsequent **abortive visit** and any direct and reasonable additional costs that **ESCo** incurs in carrying out any necessary work without access to the **premises**.
  2. If **ESCo** is unable to gain access to the **premises** when arranged with the **customer** or as **ESCo** is otherwise entitled under this **contract** and this prevents **ESCo** from fixing any interruption or reduction in the **customer’s** **heat supply** [and/or **electricity supply**], **ESCo** shall not be obliged to provide the **customer** with a **heat supply** [and/or **electricity supply**] until the **customer** has provided **ESCo** with access to its premises to allow **ESCo** to fix the problem. **ESCo** will not be liable for **service-failure payments** in relation to any such period of interruption or reductionuntil the **customer** has provided **ESCo** with the required access to the **premises**.
  3. **ESCo** shall ensure that any maintenance carried on that may cause an interruption, discontinuance or reduction to the **heat supply** [and/or **electricity supply**] shall, so far as is reasonably practicable, occur during anticipated periods of low demand for the **heat supply** [and/or **electricity supply**]. **ESCo** will use reasonable endeavours to avoid, or if unavoidable undertake such maintenance so as to minimise and mitigate against, the effects of any potential interruption, discontinuance or reduction or other adverse effect to the **heat supply** [and/or **electricity supply**] to the **customer**.

1. Termination

The customer’s right to terminate

* 1. [Subject always to Clause 2.3], the **customer** shall be entitled to terminate this **contract** by giving **ESCo** at least [thirty (30)] days' notice, by writing to **ESCo** at [ ] or by emailing **ESCo** at [ ].
  2. If the **customer** vacates the **premises**, the **customer** must give **ESCo** a forwarding address so that **ESCo** can contact the **customer** about any outstanding reconciliation of **charges**. **ESCo** shall take a final meter reading on the date this **contract** terminates and provide the **customer** with a final **bill** within [(fourteen (14)) days of termination.

ESCo’s right to terminate

* 1. **ESCo** shall be entitled to terminate this **contract**, without any liability to the **customer** except as set out in Clause 12.1, where:
     1. **ESCo** has suspended or disconnected the **heat supply** [and/or **electricity supply**] to the **premises**, as set out in Clause 7 and **ESCo** has sent the **customer** a further final reminder letter and after ten (10 )days the **customer** still hasn’t paid **ESCo’s** **charges** or made arrangements to pay them;
     2. the **customer** or anyone visiting the **premises** has attempted to use the **heat supply** [and/or **electricity supply**] without **ESCo’s** permission or in a way designed to avoid paying for it, whereupon **ESCo** shall give the **customer** [five (5)] days’ notice before **ESCo** terminates this **contract** and shall charge the **customer** for any **heat supply** [and/or **electricity supply**]consumed.
     3. the **customer** no longer occupies the **premises**, whereupon **ESCo** shall give the **customer** [five (5)] days’ notice before **ESCo** terminates this **contract**.
     4. there is a problem with the **premises’ heating system** [and/or the **premises**] which is causing damage to or seriously affecting the **district heating scheme** and the **customer** has not resolved the issue after [three (3)] months’ notice from **ESCo** of the problem, whereupon **ESCo** shall give the **customer** [ten (10) days’ notice before **ESCo** terminates this **contract**.
     5. circumstances as set out in Clause 13 mean that **ESCo** cannot provide the **customer’s** **heat supply** [and/or **electricity supply**] under this **contract**, whereupon **ESCo** shall give the customer [fourteen (14)] days’ notice before **ESCo** terminates this **contract**.
     6. **ESCo’s** right to use the **district heating scheme** and make the **heat supply** [and/or **electricity supply**] available to the customer’s **premises** ends or is terminated.
     7. the customer informs **ESCo** that it no longer requires a **heat supply** [and/or **electricity supply**] and requests that **ESCo** permanently stops providing a **heat supply** [and/or **electricity supply**] to its **premises**.

1. Consequences of terminating this contract[[2]](#footnote-3)
   1. The **customer** must pay all relevant **charges** up to the date this **contract** terminates. After this **contract** terminates, the **customer** shall remain liable for the **customer’s** previous breaches of this **contract** and **ESCo** shall remain liable for any of **ESCo’s** previous breaches this **contract**.
   2. Where **ESCo** gives the **customer** notice that **ESCo** is going to suspend or disconnect the **heat supply** to the **premises** in accordance with the terms of this **contract**, or if the **customer** or **ESCo** terminate this **contract**, the **customer** must give **ESCo** access to the **premises**, at a reasonable time, to suspend or disconnect the **heat supply** [and/or **electricity supply**] to the **premises** and/or reconfigure or remove the **heat meter** [and/or **electricity meter**] or any of **ESCo’s** equipment **(**with the consent of the **customer’s** landlord if applicable**)**. The **customer** must not reconnect the **heat supply** [and/or **electricity supply**] to the **premises** without **ESCo’s** permission.
   3. Where the **customer** continues occupying the **premises** and uses the **heat supply** [and/or **electricity supply**] after this **contract** has terminated, or allows anyone else to do so, the **customer** shall be required to pay **ESCo** for the **heat supply** [and/or **electricity supply**] at a price **ESCo** shall determine in its discretion, taking into account any extra costs arising as a result of the **customer** taking the **heat supply** [and/or **electricity supply**] at the **premises** without a contractbeing in place.
2. Force Majeure
   1. Subject always to **ESCo’s** rights set out in Clause 9, if either **party** is or will be prevented from performing its obligations under this **contract** by a **force majeure** **event,** it shall as soon as reasonably practicable (and in in any event within [two (2)] **business days**) after the occurrence of the **force majeure event:**
      * 1. notify the other **party** of the **force majeure event**, giving details of the event, the obligations affected and the estimated period of time the **force majeure event** is likely to subsist; and
        2. use reasonable endeavours to resume performance of obligations affected by the **force majeure event;**
        3. use reasonable endeavours to minimise the damage caused by the suspension or limitation of its obligations.
   2. The **party** affected by the **force majeure event** shall, provided that notice has been given in accordance with Clause 13.1 be excused from performance of its obligations affected by the **force majeure event** for so long as the **force majeure event** prevents it from performing them.
   3. [Where the **heat supply** [and/or **electricity supply**] has been affected by a **force majeure event**, the **customer** shall not be obliged to pay the [**charges**]]. *[Drafting Note: Consider whether to include this Clause according to ESCo’s business model/ profile of the customer etc.]*
   4. If as a result of a **force majeure event** **ESCo** is unable to provide the **heat supply** [and/or **electricity supply**] (including by means of temporary plant), **ESCo** will have no liability to the **customer** for any **service failures** which result from such **force majeure event** and the **customer**  shall (at its own cost) be entitled to procure an alternative heat supply, [and/or **electricity supply**] for so long as the **force majeure event** subsists.
3. Limit of liability
   1. Nothing in this **contract**:
      * 1. excludes or limits **ESCo’s** or the **customer’s** liability for fraud or fraudulent statements;
        2. excludes or limits **ESCo’s** liability for death or personal injury resulting from **ESCo’s** negligence (or the negligence of **ESCo’s** employees, officers or agents); and/or
        3. excludes or limits the **customer’s** liability for death or personal injury resulting from the **customer’s negligence** (or the negligence of the **customer’s** employees, officers or agents); and/or
        4. affects the **customer’s** legal rights as a consumer.
   2. Neither **party** will be liable to the other for any **indirect loss**, arising out of or in connection with this **contract**.
   3. **ESCo’s** liability in any 12-month period, for any one event, or any series of connected events, will be limited to *[Drafting Note: Insert appropriate cap on liability, considering level of damage that could be made by an operative in a unit, investment made by the customer (if any) in a connection to obtain heat [or electricity,]insurances cover etc Consider also whether any liabilities will sit outside the cap].* This limit will increase each year in line with the annual increase in the Consumer Prices Index (as published by the Office of National Statistics).
   4. The **customer’s** liability in any 12-month period, for any one event, or any series of connected events, will be limited to *[Drafting Note: Insert appropriate cap on liability, considering level of damage that the customer could cause to the district heating scheme, the investment made by ESCo in the connection that may not otherwise be recoverable, etc.* *Consider also whether any liabilities will sit outside the cap]*. This limit will increase each year in line with the annual increase in the Consumer Prices Index (as published by the Office of National Statistics).
   5. The **parties** acknowledge that the limits on liability set out in this **contract**  are reasonable given the balance of risk and reward set out in this **contract.**
   6. This Clause 14 does not affect **ESCo’s** obligations to meet the **performance indicators** set out in Schedule 2, or the customer’s rights to receive **service-failure payments** for a **service failure**.
4. Dispute Resolution Procedure
   1. **ESCo’s** complaints procedure is set out in the **customer handbook** or alternatively the customer can access it on **ESCo’s t**he website here *[Drafting Note: Insert relevant link]* or request a copy from the customer at *[Drafting Note: Insert relevant address.]* *[Drafting Note: Alternatively the customer could set the procedure out under this Clause 15. Amend as appropriate to include ESCo’s specific procedure.]*
   2. If the **customer** has any comments or complaint about **ESCo’s** services, contact  *[Drafting Note: Insert details of relevant customer service team ]* on *[Drafting Note: Insert relevant contact number]****.***
   3. **ESCo** shall always use reasonable endeavours to settle the **customer’s** complaint as quickly as possible. If, after following **ESCo’s** full complaints procedure, the **customer** is still not satisfied with **ESCo’s** response to the **customer’s** complaint, the **customer** shall be entitled to refer the dispute (the **dispute)**, in good faith, to mediation, to settle the dispute in accordance with [the CEDR Model Mediation Procedure/ [other dispute procedure *Drafting Note: Insert as appropriate].*
   4. To initiate the mediation, a **party** must serve notice in writing (an **ADR notice**) to the other **party**, referring the **dispute** to mediation. Unless otherwise agreed by the **parties**, the mediation will commence not later than [ ] days after the date of the **ADR notice**.
   5. [The commencement of mediation shall not prevent the **parties** commencing or continuing court proceedings in relation to the **dispute** under Clause 21.8 which shall apply at all times.] OR [No **party** may commence any court proceedings under Clause 21.8, in relation to the whole or part of the **dispute** until [ ] days after service of the **ADR notice,** provided that the right to issue proceedings is not prejudiced by a delay]
5. Confidentiality
   1. **Duty of confidentiality**

Save as provided by Clause 16.2 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 **ESCo** or any entity engaged or which may be engaged on or following the termination of this **contract** to perform any of the obligations of **ESCo** under this **contract**;
      3. to the extent that the **confidential information**:

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 16;

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

was lawfully received or obtained by the **disclosing party** from any person without restriction on its use or disclosure;

* + - 1. to enable a determination to be made under Clause 15;
      2. when required to do so in any jurisdiction:

by law ;

by or pursuant to the rules or any order of any court, tribunal or agency of competent jurisdiction; or

by any securities exchange, **recognised investment exchange** or regulatory or governmental body having jurisdiction over it wherever situated;

* + - 1. to any regulatory or governmental body (including any **relevant authority**) in any jurisdiction and having jurisdiction over:

the disclosing party; or

the obtaining, monitoring and/or enforcement of any **authorisation**;

* + - 1. to enable any registration or recording of any **authorisation**;
      2. to a relevant tax authority in any jurisdiction to the extent required for the proper management of the taxation affairs of the **disclosing party**;
      3. to insurers for the purpose of obtaining any insurances;
      4. if such disclosure is expressly permitted by some other provision of this **contract** 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 16.3.2 and Clause 16.4 if a Party is required to disclose **confidential information** in a manner permitted by Clause 16.2(a), Clause 16.2(b), or Clause 16.2(i) then it shall:
        + 1. inform the person to whom **confidential information** is to be disclosed of the restrictions contained in this **contract**; and
          2. ensure that such person shall observe such restrictions notwithstanding that such person is not **party** to this **contract**.
     2. For the avoidance of doubt, a **party** is deemed to have satisfied its obligation in Clause 16.3.1(b) if, prior to the disclosure of the Confidential Information, it enters into a contract with the person referred to in Clause 16.3.1(b) which contains an equivalent confidentiality arrangement to this Clause 16.
  2. **Consultation**

If a **party** is required to disclose **confidential information** in a manner permitted by Clause 16.2(e), Clause 16.2(f), Clause 16.2(g), or Clause 16.2(h), 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.
  1. **Exploitation of information**

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

* 1. **Continuance of obligations**

The obligations in this Clause 16 shall continue to apply after termination of this **contract**.

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

Subject to **ESCo’s** need to have all information necessary to enable the on-going operation and maintenance of the **district heating network** and the on-going provision of the **heat supply** [and/or **electricity supply**], on termination of this **contract** 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 **contract** that are expressly provided for in this **contract**, 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. Data Protection

**ESCo** shall process any personal data (as defined in the Data Protection Act 1998) it acquires under or in connection with this **contract**  in accordance with **ESCo’s** **data protection policy** [which is set out under Schedule [ ]/ [on our website at [ ] [*Drafting Note: Include detail of ESCo’s data protection processes in this Clause/ in Schedule form or insert relevant link to website where process is set out]*.

1. Variation

Either **party** shall be entitled to request an amendment, change, revision or variation to this **contract,** provided that no variation of this **contract** shall be effective unless it is in writing and signed by the **parties**. *[Drafting Note: Consideration will need to be given to changes in law which could lead to increases or decreases in heat charges [and electricity 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. Notices
   1. A notice [or communication] given to a **party** under or in connection with this **contract** shall be in writing and sent to the **party** at the address [or email address] given in this **contract** or as otherwise notified in writing to the other **party**.
   2. This Clause 19 sets out the delivery methods for sending a notice to a **party** under this **contract** and, for each delivery method, the date and time when the notice is deemed to have been received or given (provided that all other requirements of this Clause 19 have been satisfied and subject to the provision in Clause 19.3).
      * 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]; [or]
        3. [if sent by email, at the time of transmission.]
   3. If deemed receipt under Clause 19.3. would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this Clause 19.3 business hours means 9.00am to 5.00pm during **business days**.
   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.]
2. Subcontracting and transfers
   1. **ESCo** may subcontract any of **ESCo’s** obligations under this **contract** at any time, provided that any agent attending the **premises** will be clearly identified as **ESCo’s** agent
   2. **ESCo** may not transfer or novate **ESCo’s** rights or obligations under this **contract** without first obtaining the **customer’s** consent in writing (such consent not to be unreasonably withheld or delayed).
   3. The **customer** may not sub-contract or transfer the **customer’s** rights or obligations under this **contract** without obtaining **ESCo’s** consent in writing (such consent not to be unreasonably withheld or delayed).
3. General
   1. No failure or delay by a **party** to exercise any right or remedy provided under this **contract** 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.
   2. This **contract** (which includes the **contract particulars**) 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.
   3. 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. Subject to Clause 14 each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this **contract**.
   4. This **contract** does not give rise to any rights under the Contracts (Rights of Third parties) Act 1999 to enforce any terms of this **contract**.
   5. If any provision or part-provision of this **contract** 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 **contract**. Following any such deletion, 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.
   6. Terminating this **contract** will not affect any Clause which is intended to apply after the end of this **contract**.
   7. This **contract** 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.
   8. Each **party** irrevocably agrees that the courts of England and Wales shall have [exclusive]/ [non-exclusive] jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this **contract** or its subject matter or formation.

**This contract has been entered into on the date stated at the beginning of this Agreement.**

*[Drafting Note: Amend signatory blocks as appropriate.]*

Signed for and on behalf of

[ESCO]

Acting by

-------------------------------

Duly authorised signatory

Signed for and on behalf of

[CUSTOMER]

Acting by

-------------------------------

Duly authorised signatory



ESCo’s charges

1. Heat supply charges

The **heat supply** charges comprise:

* a **standing charge**
* a **variable charge**

The **charges** on the date this **contract** starts are as follows.

| **Charge** | **Before VAT** | **Including VAT** |
| --- | --- | --- |
| **standing charge** | [ ]/ day | [ ]/ day |
| **variable charge** | [ ] pence per unit (kilowatt hour) | [ ] pence per unit (kilowatt hour |

These **charges** are valid from [ ] to [ ]. *[Drafting Note: If the commercial customer is leasing the premises from a landlord, the landlord may be responsible for paying or may elect to pay a landlord standing charge to ESCo to cover ESCo’s costs of maintaining and replacing the district heating scheme and making a heat supply available to such commercial lessees. In such event, the landlord may also be permitted to pass on these charges through to commercial customer lessees as standing charge payable by commercial customer lessees pursuant to their leases with the landlord or may factor this in to the setting of the rent.]*

[**Electricity Supply/Electricity Charge**].

*[Drafting Note: Parties to consider how charges will be set e.g. parties may want to consider “motivational tariffs”e.g. that financially rewards lower return temperatures etc.]*

1. annual price review

[**ESCo** will review **ESCo’s** heat-supply **charges** on 31 March each year in line with [inflation] and [ ]].

*[Drafting Note: Include ESCo’s relevant price review methodology and indexation methodology – for example, comparisons to gas, whether heat standing charges and heat variable charges will be indexed on the same basis etc. Parties to consider how and when electricity charges will be reviewed.]*

1. Abortive call-out charge

The **abortive call-out charge** is [ ]. **ESCo** may increase the charge on 31 March each year in line with [inflation].

1. Debt-processing charge

The **debt-processing charge** is [ ]. **ESCo** may increase the charge on 31 March each year in line with the [inflation]. *[Drafting Note: Include ESCo’s relevant price indexation methodology.]*

1. Reconnection charge

The **reconnection charge** is [ ]. **ESCo** may increase the charge on 31 March each year in line with the [inflation]. *[Drafting Note: Include ESCo’s relevant price indexation methodology.]*

1. Other charges

**ESCo** will charge the **customer** **ESCo’s** reasonable costs of any associated repair or replacement if the **customer** damages the **heat** **meter** or **HIU** [and/or **electricity meter**]or where **ESCo** carries out any work the **customer** is responsible for under this **contract**.



Performance indicators

*[Drafting Note: To be amended as per ESCo’s business model/ negotiations between customer and ESCo – e.g. ESCo may want to supply heat at prescribed temperature and impose requirements on customers regarding return temperatures.]*

| **Item** | **Standard** | **Service level** | **Service failure** | **Service-failure payment (compensation)** |
| --- | --- | --- | --- | --- |
| 1 | **Planned interruption** | **ESCo** will give the **customer** at least [forty eight (48)] hours’ written notice of a **planned interruption** to the customer’s **heat supply** [and **electricity supply**]that will last more than [four (4)] hours | Less than [forty eight (48)] hours’ written notification given of a **planned interruption** | *[Drafting Note:* *Include payment per relevant period as according to business model]* |
| **ESCo** will ensure that a **planned interruption** lasts no longer than [five (5)] days | When a **planned interruption** has lasted longer than [five (5)] days. | *[Drafting Note: As above]* |
| 2 | **Unplanned supply interruption** | Within [twenty four (24)] hours from the start of any **unplanned supply interruption** the **heat supply** will be available and at a temperature of at least [ ] at the **point of connection** [and the **electricity supply** will be available at [. ]] | When **ESCo** hasfailed to restore the **heat supply** or restore the **heat supply** to the required temperature within [twenty four (24)] hours of the interruption. | *[Drafting Note: As above]* |
| 3 | Multiple **unplanned supply interruptions** in a year | No more than [three (3)] **unplanned supply interruptions**, lasting for over [twelve (12)] hours, during a [twelve (12)] month period | More than [three (3)] **unplanned supply interruptions**, lasting for over [twelve (12)] hours, during a [twelve (12)] month period. | *[Drafting Note: As above]* |
| 5 | **Heat meter** [and/or **electricity meter**]repair or replacement | **Heat meter** [and/or **electricity meter**]accuracy to be maintained within plus/ minus [5%] | Faulty **heat meter** [and/or **electricity meter**]not replaced within [ ] days after fault is identified | *[Drafting Note: As above]* |

The **service-failure payments** and each related cap shall be increased annually on 31 March in accordance with *[inflation]. [Drafting Note: Insert relevant indexation]*

Notwithstanding the above,no **service-failure payment** will be payable to the **customer** for any  **service failure** if the failure is caused by one of the circumstances set out below.

|  |  |
| --- | --- |
| Item 2, 3 and 5 | * The **service failure** was caused by the customer not complying with this **contract**. |
| Item 2 or 3 | * **ESCo** is not able to provide the **heat supply** [and/or **electricity supply**]to the premises because of any of the events or circumstances set out in Clause 13, as long as **ESCo** has used reasonable efforts to reduce the effects of the event or circumstances and start providing the **heat supply** [and/or **electricity supply**]again as soon as possible. |
|  | * **ESCo** has to shut down the **district heating scheme** by **law**, provided that the need does not relate to or arise out of **ESCo’s** negligence or failure to comply with this **contract**. |
|  | * **ESCo** has suspended the **heat supply** [and/or **electricity supply**]because **ESCo** has good reason to believe that **ESCo** needs to do so to avoid death, injury or severe damage to property, provided that the need does not relate to or arise out of **ESCo’s** negligence or failure to comply with this **contract**. |
|  | * **ESCo** has suspended the **heat supply** [and/or **electricity supply**]to the premises under Clause 7 of this **contract**. |
| Item 4 only | **ESCo** has not been able to provide alternative heating to the **premises** due to the **customer** having failed to give **ESCo** access to the **premises** at the agreed time. |



Point of connection

*[Drafting Note: Include appropriate diagram of the point of connection for the specific customer being provided heat.]*



Premises Heating System, HIU and heat meter [and electricity meter] exclusions

*[Drafting Note: Review and add to/ exclude the below as appropriate to the services that ESCo intends to provide (e.g. exclusions where ESCo is also providing electricity supply and in the context of ESCo’s statutory obligations regarding meters). Again, parties to consider who will have responsibility for the maintenance of electrical wiring within the customer’s premises and liability where the customer cannot take electricity supply due to electrical wiring within the customer’s premises etc.]*

In relation to **ESCo’s** obligation to maintain, repair or replace the **customer’s** **heat meter** or **HIU** **ESCo** shall be obliged to comply with Clause 9.1 but will not be liable for the following:

1. The costs of repairing the **HIU** or **heat meter** 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 any direct and reasonable costs in fulfilling **ESCo’s** obligations under Clause 9.1 from the **customer**.
2. Any defect or deficiency or damage to or fault or repair or replacement of any part of the **premises heating system** or any failure to properly operate or maintain the **premises heating system**.

1. Any loss or damage to property caused as a result of the **premises' heating system** 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**.

1. Repairing faults or damage caused by subsidence (movement of the ground beneath the **premises**), structural repairs, accident, fire, lightning, explosion, flood, storm or freezing weather conditions (unless in each such case caused or contributed to **ESCo**).

1. **ESCo** is unable to gain access to the relevant part of the **HIU** or the **heat meter** and any costs incurred to gain access to the **HIU** or **heat meter** where such access has been obstructed by the **customer** or anyone else.

1. Replacement of any appliances within the **premises** unless the loss or damage is caused or contributed to by **ESCo**.

1. Upgrades that the **customer’s** landlord may want to have carried out to improve or that the **customer** may want to have carried out to improve the **HIU**, **heat meter** or the **premises' heating system**.

1. Replacing or repairing parts which do not affect how the **HIU**, **heat meter** or the **premises' heating system** works or performs.
2. Resetting the **HIU** controls such as thermostats or programmers following changes due **to winter periods** or **summer periods**.
3. Interruptions to gas, electricity, water or telecommunications utilities needed to operate the **district heating scheme** or the **premises heating system.**

1. 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**.

1. Replacing any batteries in any controls that operate the **premises' heating system**.

1. Removing sludge or limescale from the **premises' heating system** or any appliance, or repairing damage caused to the **heat meter**, **HIU** or the **premises' heating system** by sludge or limescale within the **premises' heating system**, unless the sludge or limescale is **ESCo’s** fault. Unless **ESCo’s** fault, **ESCo** shall be entitled to recover any direct and reasonable costs in fulfilling **ESCo’s** obligations under Clause 9.1 from the **customer**.

1. The water treatment of any water circuits in the **premises' heating system** except where **ESCo** has drained the **premises' heating system** in order to comply with **ESCo’s** obligations under this **contract**. In these circumstances **ESCo** shall be entitled to recover any direct and reasonable costs in fulfilling **ESCo’s** obligations under Clause 9.1 from the **customer**.
2. Interruptions to **heat supply** whilst **ESCo** repairs or replaces any part of the **HIU** or **heat meter**.
3. Anyone (other than **ESCo**) interfering with any part of the **HIU** or **heat meter**.
4. Dealing with any **emergency** (unless caused by **ESCo**).
5. A **force majeure event** under Clause 13 of this contract.

1. Refer to energy bill (instead of heat bill) where ESCo is providing both heat and electricity to the customer. [↑](#footnote-ref-2)
2. Parties to consider according to their particular circumstances. [↑](#footnote-ref-3)