Dated 20 [\*]

1. ***[LANDLORD]***

to

1. ***[TENANT]***

GREEN HEAT NETWORK FUND

**DRAFT: ENERGY CENTRE PLANT ROOM LEASE**



Version Control

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| --- | --- | --- | --- |
| **Version number** | **Date of issue** | **Author** | **Comment** |
| 1.0 | 31 March 2019 | Lux Nova Partners | Initial/internal draft |
| 2.0 | 31 July 2019 | Lux Nova Partners | Draft issued for focused consultation |
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| 4.0 | 13 December 2019 | Lux Nova Partners | Marked up after responses to wider consultation which closed on 17 November 2019 |
| 5.0 | 15 January 2020 | Lux Nova Partners | No further comments from BEIS. |
| 6.0 | 29 November 2022 | Lux Nova Partners | Updating statutory references, drafting tidy ups |

***GUIDANCE NOTE***

*This Energy Centre Lease is not necessarily relevant to every district heating scheme.*

*However, it is intended for use where the owner of a district heating scheme is not also the owner of the land within which an Energy Centre is to be located. Consequently, the owner of the Energy Centre plant needs to obtain rights from the relevant land owner. In some instances, this may be by way of the grant of a lease. This is particularly common in concession type arrangements, but also elsewhere.*

*How this Energy Centre Lease might fit into a project structuring is illustrated in the following diagram:*

*This Energy Centre Lease has been drafted primarily for use in a Concession type structure, where a Developer or Local Authority lets a Concession to an ESCo to deliver a district heating solution and requires occupation of a structure to house the energy generating plant and equipment. With that in mind, that the drafting assumes that the Energy Centre Lease will be tied to the Concession Agreement and will be co-terminous. As such, the Energy Centre Lease can, therefore, be “light touch.” Many key provisions have not been included as they are covered under the Concession (for example, standard termination rights, provisions relating to obtaining authorisations, the manner in which works are carried out, claims between the parties, etc).*

*Appropriate tailoring will be required if there are any requirements arising in the freehold or a headlease that need to be flowed down to ESCo in this Energy Centre Lease. With appropriate amendments, this Energy Centre Lease could also be used for the letting to an entity providing long term operation and maintenance services in relation to a district heating network, which requires exclusive access to a building housing the energy generating plant and equipment. Appropraite tailoring will also be required where the lease applies to eg ground source heat pumps or bore holes, where the energy plant and equipment isn’t housed in one discrete building.*

*This Energy Centre Lease would also be suitable for the letting of Substation Plant Rooms that are located in individual blocks, within which the heat exchanger equipment between Secondary and Primary Heating Networks is located.*

*Easements are proposed for the purposes of access to the Primary Heating Network. For the purposes of this Energy Centre Lease, the easements are set out under the Second Schedule, rather than as a standalone document. This assumes that the Landlord of the Energy Centre also owns the land across which all the pipework crosses. If that is not the case, a standalone Pipework Easement (or Lease if that is the preferred option) will be required. See our separate, standalone Pipework Easement. These documents focus on land access and assume that (i) ownership of plant and equipment; and (ii) termination rights and compensation payments that might be due on termination for the costs or value of the relevant asset or business (as applicable); will be dealt with in the Concession Agreement (or elsewhere).*

*The structuring assumption and risk allocation underlying this Energy Centre Lease 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 Energy Centre Lease 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.*

*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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| --- | --- |
| LEASE PARTICULARS PART I | |
| **LR1. Date of lease** |  |
| **LR2. Title number(s)** | **LR2.1 Landlord's title number(s)**  *Title number(s) out of which this lease is granted. Leave blank if not registered.*  [TBC] |
| **LR2.2 Other title numbers**  *Existing title number(s) against which entries of matters referred to in LR9, LR10, LR11 and LR13 are to be made.*  [TBC] |
| **LR3. Parties to this lease**  *Give full names and addresses of each of the parties. For UK incorporated companies and limited liability partnerships, also give the registered number including any prefix. For overseas companies, also give the territory of incorporation and, if appropriate, the registered number in the United Kingdom including any prefix.* | **Landlord**  **[Landlord]**, a company registered in England and Wales as company number [•] and having its registered office at [•]. |
| **Tenant**  **[ESCo]**, a company registered in England and Wales as company number [•] and having its registered office at [•]. |
| **Other parties**  [None.] |
| **LR4. Property**  *Insert a full description of the land being leased*  *Or*  *Refer to the clause, schedule or paragraph of a schedule in this lease in which the land being leased is more fully described.*  *Where there is a letting of part of a registered title, a plan must be attached to this lease and any floor levels must be specified.* | **In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.**  The property known as [The Energy Centre], [ ] shown edged [ ] on Plan [ ] and described in more detail in the **First Schedule** to and defined as "Property" in this lease. |
| **LR5. Prescribed statements etc.**  *If this lease includes a statement falling within LR5.1, insert under that sub-clause the relevant statement or refer to the clause, schedule or paragraph of a schedule in this lease which contains the statement.* | **LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.**  [None] |
| *In LR5.2, omit or delete those Acts which do not apply to this lease.* | **LR5.2 This lease is made under, or by reference to, provisions of:**  [None] |
| **LR6. Term for which the Property is leased**  *Include only the appropriate statement (duly completed) from the three options.*  *NOTE: The information you provide, or refer to, here will be used as part of the particulars to identify the lease under rule 6 of the Land Registration Rules 2003.* | The term is as follows:  [● years from and including to and including [**date of expiry of [Concession Agreement]**]] |
| **LR7. Premium**  *Specify the total premium inclusive of any VAT where payable.* | None. |
| **LR8. Prohibitions or restrictions on disposing of this lease** | This lease contains a provision that prohibits or restricts dispositions. |
| **LR9. Rights of acquisition etc.**  *Insert the relevant provisions in the sub-clauses or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.* | **LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land**  [None] |
|  | **LR9.2 Tenant's covenant to (or offer to) surrender this lease**  [None] |
|  | **LR9.3 Landlord's contractual rights to acquire this lease**  [None] |
| **LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property.**  *Insert the relevant provisions or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.* | [ ] |
| **LR11. Easements**  *Refer here only to the clause, schedule or paragraph of a schedule in this lease which sets out the easements.* | **LR11.1 Easements granted by this lease for the benefit of the Property**  The easements granted for the benefit of the Property as specified in this lease at Part 1 of the **Second Schedule**. |
|  | **LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property**  The easements granted or reserved by this lease over the Property as specified in this lease at Part 2 of the Second Schedule. |
| **LR12. Estate rentcharge burdening the Property**  *Refer here only to the clause, schedule or paragraph of a schedule in this lease which sets out the rentcharge.* | [None] |
| **LR13. Application for standard form of restriction**  *Set out the full text of the standard form of restriction and the title against which it is to be entered. If you wish to apply for more than one standard form of restriction use this clause to apply for each of them, tell us who is applying against which title and set out the full text of the restriction you are applying for.*  *Standard forms of restriction are set out in Schedule 4 to the Land Registration Rules 2003.* | [None] |
| **LR14. Declaration of trust where there is more than one person comprising the Tenant**  *If the Tenant is one person, omit or delete all the alternative statements.*  *If the Tenant is more than one person, complete this clause by omitting or deleting all inapplicable alternative statements.* | [Not applicable] |
|  |  |

| **LEASE PARTICULARS - PART II** | | |
| --- | --- | --- |
| **1 Principal Rent** | : | [ONE POUND (£1) per annum (if demanded)]  *[Drafting note: it is assumed that the heat [and electricity] supplier/ ESCO will only be charged peppercorn rent for occupation of the Energy Centre]* |
| **2 Rent Commencement Date** | : | The date hereof |
| **3 Permitted Use** | : | The construction, operation, repair, renewal, replacement, use and removal of equipment for the provision of heat [and electricity] to the [Estate] and the exercise of all ancillary rights for the purposes of the [Concession Agreement] and for storage of fuel and waste from the Property [together with ancillary office use] |

lease

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

AGREED TERMS

# Definitions

In this Lease the following expressions have the meanings indicated:

[Access: means the access shown for the purpose of identification coloured [•] on Plan [ ] and having a minimum width of [ ] meters, or such other means of access over the Estate as is from time to time required by the Tenant (acting reasonably) and approved by the Landlord (such approval not to be unreasonably withheld or delayed)[[1]](#footnote-1).]

Adjoining Property: each and every part of the adjoining and neighbouring property in which the Landlord or a Group Company of the Landlord has an interest during the Term known as [DESCRIPTION OR ADDRESS OF THE ADJOINING PROPERTY] [registered at HM Land Registry with title number[s] [TITLE NUMBER[S] IF REGISTERED]] [shown edged blue on the attached plan marked Plan 3].

Alterations: means any alterations, additions or other works to or that impact the Property.

Applicable Law: any law applicable in England, including any common law, statute, statutory instrument or other delegated or subordinate legislation or any international law, any proclamation, byelaw, rule, order, notice of any competent body, together with any applicable regulatory policy, guidance, direction, industry code or judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

Authorised Person: means any person authorised by the Landlord to enter the Estate.

Authorisations: means any authorisation, consent, permission, approval, resolution, licence, exemption, filing, notarisation, permit, licence, agreement or registration (whether statutory, regulatory, contractual or otherwise) including (without limitation), required by Applicable Law [or required from any statutory utility provider] and relating to planning permissions and environmental laws.

Base Rate: means the base rate from time to time published by the Bank of England, or (if not available) such comparable rate of interest as the Landlord shall reasonably require.

Building[[2]](#footnote-2): means the land and building known as [ ] and shown for identification edged [ ] on Plan [ ] and includes any part of it and any alteration or addition to it or replacement of it.

CDM Regulations: means the Construction (Design and Management) Regulations 2015 (as may be updated from time to time).

Common Parts: means the accesses, lifts, [service yards], [car parks] and other areas of the Building from time to time designated by the Landlord for common use by the tenants and occupiers of the Building.

Conducting Media: means all sewers, drains, pipes, wires, watercourses, subways, cables, tubes, apparatus, conduits conductors and any other media or works (other than the Energy System) for the conduct or transmission of substances, energy or data and any ancillary apparatus attached to them and any enclosures for them.

[Concession Agreement: means the agreement entered into by the Tenant and the Landlord in relation to the delivery of heat [and electricity] to occupants of the Estate, utilising the Energy System][[3]](#footnote-3)

Easement Corridor: the [NUMBER] metre wide strip of land within the Adjoining Property shown coloured [COLOUR] on Plan 2[[4]](#footnote-4).

[Electricity Network: the private network of wires and ancillary plant and equipment to enable the supply of electricity from the Energy Plant and Equipment to end users.]

Encumbrances: means the obligations and encumbrances contained or referred to in the documents specified in the Third Schedule (*Documents and matters affecting title*).

Energy Plant and Equipment: means the plant and equipment used to produce heat [and electricity] and all associated equipment and apparatus situated on the Property.

Energy System: means the Energy Plant and Equipment and the Heat Distribution Network [and the Electricity Network].

Estate: means the estate known as [ ] shown edged [ ] on Plan [ ][[5]](#footnote-5) being the [whole]/[part] of the property registered under the title numbers set out in clauses LR2.1 and LR2.2 and includes any part of it and any alteration or addition to it or replacement of it.

Estate Common Areas: means the following parts of the Estate which from time to time are or are intended to be for the benefit or amenity of the owners and occupiers of the Estate generally:

1. the Roads, roads, ramps, footpaths, footbridges, towpaths, pedestrian areas, cycle ways, road lighting, road signs and signals;
2. any water features, irrigation systems, landscaped areas (including statues and other artwork), CCTV surveillance systems, alarm and detection systems, litter receptacles and other amenities;
3. any estate management office, landscape compound or ancillary buildings;
4. all Conducting Media, drainage attenuation tanks and other things related to services in upon over or under or serving the Estate;
5. all structural elements, decks, podiums, party structures, boundary walls, retaining walls, railings and fences of (or used in common with the owners of any premises adjoining or neighbouring) the Estate; and
6. all signage together with any bus stops, bus shelters or taxi ranks;

TOGETHER WITH all other areas or amenities on the Estate or outside the Estate but serving or otherwise being for the benefit of the Estate as a whole and which are from time to time provided or designated for the common amenity or benefit of the owners or occupiers of the Estate whether or not used in common with the general public.

Force Majeure: shall have the same meaning that expression has in the [Concession Agreement] (mutatis mutandis).

Group Company: means any company that is a member of the same group (within the meaning of section 42 of the LTA 1954) as the Tenant.

Hazardous Substances: shall have the same meaning that expression has in the [Concession Agreement] (mutatis mutandis).

Heat Distribution Network: means the network of pipes, meters, interface units, substations and other ancillary equipment that transfers heat from the Energy Plant and Equipment to the end users and any associated plant or equipment.

Insured Risks: means fire, lightning, earthquake, explosion, aircraft (other than hostile aircraft) and other aerial devices or articles dropped therefrom, riot, civil commotion, malicious damage, storm or tempest, bursting or overflowing of water tanks apparatus or pipes, flood and impact by road vehicles (to the extent that insurance against such risks may ordinarily be arranged with an insurer of good repute) and such other risks or insurance as may from time to time be required by the Landlord (subject in all cases to such exclusions and limitations as may be imposed by the insurers), (and Insured Risk means any one of them); except to the extent that any such risk is for the time being an Uninsured Risk.

Interest Rate: interest at the base rate from time to time of [NAME OF BANK] or if that base rate stops being used or published then at a comparable commercial rate reasonably determined by the Landlord. *[Drafting Note: In some cases, interest rate is agreed by the Parties].*

Landlord: means the person so named in the clause LR3 of the Particulars and includes any other person entitled to the immediate reversion to this Lease.

Particulars: means the Lease Particulars Part I and the Lease Particulars Part II set out at the beginning of this Lease.

Permitted Use: means the use of the Property as set out in clause 3 of the Lease Particulars Part II.

Plan 1: means the plan annexed hereto at the First Schedule marked “Plan 1”.

Plan 2: means the plan annexed hereto at the First Schedule marked “Plan 2”.

Plan 3: means the plan annexed hereto at the First Schedule marked “Plan 3”.

Planning Acts: includes the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990 and the Planning and Compulsory Purchase Act 2004.

Property: means the Property being described in more detail in the First Schedule.

Prescribed Rate: means four per cent above the base rate of [ ] Bank Plc from time to time (or such other clearing bank as the Landlord shall nominate) or (if such rate shall cease to be published) such other reasonable or comparable rate as the Landlord shall from time to time designate.

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.

Rent: means the rent so described in the Particulars.

Requisite Consents: means all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for the carrying out of the Tenant's works and services as set out under the [Concession Agreement].

Retained Property: means the Estate excluding the Property.

Roads: means those parts of the Estate to be used from time to time throughout the Term as footpaths or roadways in common by all tenants and occupiers of and visitors to the Estate which are not adopted public highway including (but without limitation) roads for vehicular traffic.

Service Charge: means the sum of [ ] per annum subject to annual review in accordance with the Third Schedule. *[Drafting Note: In some cases, no services charges are payable by tenants].*

Superior Lease: means the Lease specified in Part 3 of the Second Schedule under which the Landlord holds the Property.

Superior Landlord: means

1. any person or persons for the time being entitled to the reversion immediately or immediately expectant on the determination of the Superior Lease; and
2. any other person who at any time holds an interest in the Property superior to this Lease except for the person whose interest is at the relevant time the reversion immediately expectant on the termination of this Lease.

Term: means the term specified in clause LR6.

VAT: means value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement tax and any additional tax.

Uninsured Risk: means any risk referred to in the definition of Insured Risks against which the Landlord does not insure (or in respect of which there is a partial exclusion to the extent that the partial exclusion applies) because insurance cover for that risk is either unavailable in the London insurance market, or is available there only at a premium or subject to conditions which in the Landlord's reasonable discretion are unacceptable.

1995 Act: means the Landlord and Tenant (Covenants) Act 1995.

# Interpretation

## The expressions the "Landlord" and the "Tenant" shall wherever the context so admits include their respective successors in title.

## Where the Tenant for the time being are two or more persons the terms the "Tenant" or the include the plural number and obligations expressed or implied to be made by such party are deemed to be made by such persons jointly and each of them severally.

## Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

## References in this lease to any statute or legislation (whether specific or general) include any other statute or legislation replacing amending or supplementing the same and any orders, regulations, bye-laws, notices, permissions, approvals or consents thereunder.

## The Particulars and the details and expressions therein appearing shall be included in and form part of this Lease.

## An obligation of the Tenant not to do something includes an obligation not to cause or allow that thing to be done and a reference to any act, or to any act or omission, of the Tenant includes any act, or any act or omission, of any other person at the Property with the Tenant's express or implied authority.

## An obligation of the Landlord not to do something includes an obligation not to cause or allow that thing to be done and a reference to any act, or to any act or omission, of the Landlord includes any act, or any act or omission, of any other person at the Property with the Landlord’s express or implied authority.

## The words "include" and "including" are deemed to be followed by the words "without limitation" and general words introduced by the word "other" do not have a restrictive meaning by reason of being preceded by words indicating a particular class of acts, things or matters.

# Demise

## The Landlord demises to the Tenant for the Term, the Property:

### together with the rights referred to in Part 1 of the **Second Schedule,** for the benefit of the Tenant and any person deriving title under the Tenant;

#### to be enjoyed in common with the Landlord and any Authorised Persons unless otherwise stated in Part 1 of the **Second Schedule**;

#### to be capable of exercise by the Tenant’s employees, contractors, agents and other authorised representatives; and

#### to be exercised subject to the provisions of this Lease;

### subject to:

#### the exceptions and reservations referred to in Part 2 of the **Second Schedule**;

#### any documents and matters referred to in the **Third Schedule**; and

#### the Tenant, pursuant to clause 3.4 (*Rent*), yielding and paying during the Term, the Rent.

## Quiet enjoyment

Subject to clause 3.3 (*No derogation from grant*) the Tenant shall be entitled quietly to enjoy the Property throughout the Term without any interruption by the Landlord or any person lawfully claiming under or in trust for the Landlord.

## No derogation from grant

The exercise by the Landlord or any other person of any right reserved in this Lease shall not be in derogation of the Landlord’s grant nor be a breach of the Landlord’s obligation in clause 3.2 (*Quiet enjoyment*).

## Rent

### The Tenant shall pay:

#### the Rent and any VAT in respect of it annually in arrears (if demanded) on each anniversary of the date of this Lease; and

#### all interest payable under this lease; and

#### all other sums under this Lease, including any costs incurred by the Landlord as a result of any breach of the Tenant’s covenants in this Lease; and

#### the Service Charge annually in advance of each anniversary of the date of this Lease.

# TeNant’s Covenants

The Tenant covenants with the Landlord throughout the Term, [or until released pursuant to the 1995 Act], as follows:

## Payment of rents

To pay the respective rents and sums of money reserved and made payable at the times and in the manner in which the same are set out or referred to in clause 3.4 without any deduction, counter-claim or set-off (save as required by law) and to make all such payments to the Landlord on the due date through the Tenant's bankers by the direct debit system.

## Interest on late payments

If the Tenant shall fail to pay any rents or any other sum payable under this lease when the same is due (in the case of Rent whether formally demanded or not) to pay to the Landlord as additional rent (but without prejudice to any other rights of the Landlord) interest on all such rents or other sums from the due date for payment until the date actually paid at the Prescribed Rate current at such due date and any such interest shall be recoverable by the Landlord as rent in arrears.

## Common Items

To pay all existing and future rates, taxes, charges, assessments and outgoings in respect of the Property[[6]](#footnote-6) (whether assessed or imposed on the owner or the occupier), except any tax (other than VAT) arising as a result of the receipt by the Landlord of the rents reserved by this Lease and any tax arising on any dealing by the Landlord with its reversion to this Lease provided that [other than the Service Charge], the Tenant shall have no liability for any such outgoings relating to any part of the Estate not forming part of the Property. *[Drafting Note: Parties to consider in the context of their particular circumstances.]*

## Utilities

To pay for all gas, electricity, water, telephone and other utilities used on the Property, and all charges for meters (including the cost of installation) and all standing charges relating exclusively to the Property. *[Drafting Note: Parties to consider in the context of their particular circumstances – e.g. ESCo may only pay for utilities used for servicing the energy generating equipment etc..]*

## Use

### To use the Property only for the Permitted Use.

### To use the Property in such a way as to minimise disruption and disturbance (including, but not limited to, noise, vibration and emissions) to the Landlord or its other tenants of the Building or to owners and occupiers of any neighbouring property.

### Not to:

#### use the Property or any part thereof otherwise than for the Permitted Use;

#### overload any Roads, machinery or equipment at the Property or at the Adjoining Property;

#### discharge anything into, the Conducting Media which is or may become corrosive or harmful or cause any blockage or destruction of them;

#### disturb or disrupt the Conducting Media;

#### do anything to obstruct the Common Parts or any means of escape or other facilities serving the Property or the Estate; and/or

#### do anything on the Property or the Estate or install or operate any machinery or mechanical equipment which may in the reasonable opinion of the Landlord be or become a nuisance or cause damage to the Landlord or the other tenants or occupiers of the Estate or be unduly noisy;

provided that the installation and operation of the Energy System shall not be deemed to be in breach of this clause.

### To use only for the parking of vehicles those parts of the Property designated for such purpose.

## Repair

### To put, keep and maintain the Property (excluding the Energy System) and any Conducting Media, plant and equipment serving only the Property in good and substantial repair and condition (damage by Insured Risks excepted save to the extent that such insurance is vitiated or the policy monies are irrecoverable as a result of any act or default of the Tenant);

### To make good any disrepair for which the Tenant is liable within [two (2)] months after the date of written notice from the Landlord (or sooner if the Landlord reasonably requires);

### If the Tenant fails to comply with any such notice the Landlord may enter and carry out the work, and the cost shall be reimbursed by the Tenant on demand as a debt;

### To clean, prepare and paint or treat and generally to redecorate all internal parts of the Property in every [fifth] year and in the last year of the Term;

### To make good forthwith (and to the Landlord's reasonable satisfaction) any damage to any part of the Estate caused by any act or omission or negligence of the Tenant, its relevant agents or invitees; and

### To use reasonable endeavours to minimise the extent of any damage or disrepair caused by any of the Insured Risks or an Uninsured Risk.

## Cleaning

To keep the Property clean, tidy and free from rubbish.

## Works

The Tenant shall carry out all works to or within the Property in accordance with the [Concession Agreement].

## Estate Regulations

To observe such reasonable regulations as may from time to time be made by the Landlord relating to the Building or the Estate, for the purposes of good estate management, including site security, health and safety, traffic management and loading and unloading of vehicles and the exercise of the rights granted to the Tenant under clause 3.1.1 which have been notified to the Tenant, provided that such regulations shall not:

### prevent the Tenant from having full and sufficient access to the Property during normal working hours on weekdays or otherwise; nor

### restrict the Tenant from discharging its obligations in accordance with the [Concession Agreement]. *[Drafting Note: ESCo will want to ensure that it has the access it requires for plant replacement etc.]*

## Planning applications

### To comply with the Planning Acts;

### Not to apply for or implement any planning permission affecting the Property without first obtaining the Landlord’s written consent;

### If a planning permission is implemented the Tenant shall complete all the works permitted and comply with all the conditions imposed by the permission before the determination of the Term (including any works stipulated to be carried out by a date after the determination of the Term unless the Landlord requires otherwise or unless this Lease terminates pursuant to clause 9 (*Termination and Expiry*);

### If the Landlord reasonably so requires, to produce evidence to the Landlord that the provisions of this clause 4.10 have been complied with; and

### Not to object to the local planning authority, the local highway authority, the Secretary of State or any Court or tribunal in respect of, or otherwise challenge or oppose, any planning application, planning appeal or planning permission submitted by or on behalf of the Landlord or a Group Company of the Landlord in respect of the Estate. Not without the prior written consent of the Landlord to make any application for any consent under the Planning Acts but if such application is for consent to do anything which the Tenant is permitted to do under this Lease (or where the approval of the Landlord is first required and the Landlord has approved the doing of such thing) such consent shall not be unreasonably withheld or delayed.

## Alterations

Not to make any alterations or additions which:

### affect the structure of the Building (including without limitation the roofs and foundations and the principal or load-bearing walls, floors, beams and columns);

### divide the Property or merge the Property with any adjoining premises; and

### affect the heating, air conditioning or ventilation systems at the Building;

except in respect of alterations to the Energy System (which shall be permitted provided that the Tenant complies with the obligations relating thereto contained in the [Concession Agreement]) or other internal alterations which in the reasonable opinion of the Landlord are minor and do not impact on the structure of the Building, not to make any other alterations or additions to the Property or any Conducting Media, plant or equipment serving the Property (whether alone or in common with other property) without the Landlord's written consent (not to be unreasonably withheld or delayed) provided that any works undertaken shall be carried out at times and in a manner that ensures minimal and temporary disruption and disturbance to the Landlord or its other tenants of the Building or to owners or occupiers of any neighbouring property.

## Signs and aerials

Not to erect any pole, mast, aerial or satellite dish or erect or display any sign, noticeboard or advertisement on any part of the Property except:

### a sign approved by the Landlord indicating the name of the Tenants, in a position approved by the Landlord any such approval to be in writing; and

### such signs as may be required for the purposes of complying with law or in the interests of the health and safety of other users of the Estate.

## Nuisance

Not to use the Property or any part of them for any illegal purpose nor to carry out on or from the Property any noisy, noxious, dangerous or offensive act activity or business nor anything which may be or become a nuisance, damage, annoyance or inconvenience to the Landlord or any of its tenants or the occupiers of any Property in the neighbourhood and in particular not to do or permit to be done anything which might cause electronic or radio interference with any adjoining or neighbouring Property, provided that the installation and operation of the Energy System shall not be deemed to be in breach of this clause.

### Not to do anything which would or might lead to any contamination of the Property or pollution of the environment or lead to the pollution, obstruction, damaging or overloading of the Conducting Media and to carry out (or at the Landlord's election to pay to the Landlord the reasonable and proper costs and fees of carrying out) all works necessary to remedy the contamination or pollution or to remove the source of the contamination or pollution.

### Where the Tenant has failed to observe any of the obligations in this clause 4.13 to pay to the Landlord the reasonable and proper costs incurred by it in obtaining such reports as the Landlord may reasonably require to establish what damage or harm may have been caused to the Property or other property of the Landlord and the remedial cleaning or other works necessary.

### Not to discharge or allow to enter into any underground or other waters any poisonous noxious or harmful effluent liquid or substance.

## Yielding up

Immediately before the end of the Term:

### to give up the Property together with the Energy System repaired and otherwise in accordance with the Tenant’s covenants in this Lease and in accordance with the Tenant’s obligations in the [Concession Agreement];

### (unless otherwise agreed with the Landlord and in accordance with the [Concession Agreement]) to remove all signs, tenant’s fixtures and fittings [(which shall not include the Energy System)] and other goods from the Property, and make good any damage caused thereby to the Landlord’s reasonable satisfaction; and

### If the Tenant fails to comply with clause 4.14 (*Yielding up*) to pay to the Landlord on demand any Costs incurred by the Landlord in remedying the breach.

## Preservation of Easements

To give the Landlord immediate notice if any easement enjoyed by the Property is obstructed, or any new easement affecting the Property is made or attempted.

## Acts prejudicial to insurance

### Not to do anything as a result of which any policy of insurance against damage to the Property or to any neighbouring Property may be prejudiced or payment of the policy moneys may be withheld in whole or in part or whereby the rate of premium in respect of any such insurance may be increased and to promptly give notice to the Landlord upon the happening of any event which might affect any insurance policy relating to the Property.

### In relation to the insurance effected by the Landlord in respect of the Property to pay to the Landlord any excess required by the insurers or by the Landlord within seven days of demand by the Landlord following any damage or destruction by any Insured Risks where such excess would be applicable to any claim in respect of such damage or destruction.

## Safeguarding the Property

### With respect to fire precautions and safeguarding the Property against damage by any of the Insured Risks or otherwise to comply with all requirements and recommendations of the insurers of the Property or the relevant insurance brokers or of the fire brigade or local authority and the reasonable requirements of the Landlord.

### Not to store or bring on to or allow to remain on the Property any article, substance or liquid of a specially combustible, inflammable or explosive nature or which may be a source of contamination.

### To give written notice to the Landlord upon the occurrence of any contamination of the Property and also upon the occurrence of any pollution of the environment in breach of any legislative provision caused by any use of or action or activity on the Property.

## Defects

To inform the Landlord immediately in writing of any defect in the Property which might give rise to a duty imposed by common law or statute on the Landlord and to indemnify the Landlord against all actions costs claims and liabilities suffered or incurred by or made against the Landlord in respect of the Property under the Defective Property Act 1972.

## Statutory obligations

### [Subject to clause 4.20.2], at the Tenant’s expense, shall have or shall obtain all necessary planning permissions, Requisite Consents and Authorisations related to the Permitted Use of the Property.

### [Shall not apply for any planning permission for the Property or any part of the Adjoining Property used by the Tenant without the prior consent of the Landlord, which consent may be withheld in its absolute discretion (except where planning permission is required in respect of alterations to the Energy System to which the Landlord has given consent as required by clause 4.11 (*Alterations*)).]

### At the Tenant's expense to comply in all respects with the provisions of all statutes and legislation (whether now or subsequently in force) affecting or applicable to the Property or its use and to promptly give notice to the Landlord of any notice direction or order made by any local or competent authority.

### The Tenant shall prepare update and maintain a health and safety file for any works carried out to the Property and shall comply with the CDM Regulations in respect thereof and provide to the Landlord upon reasonable request a copy of such file.

### Upon any assignment permitted by this Lease to supply to the assignee any health and safety files and/or operating manuals.

### Upon the expiry or sooner determination of this lease the Tenant shall return the updated health and safety file to the Landlord.

### Observe all [reasonable and proper] regulations made by the Landlord from time to time in accordance with the principles of good estate management and notified to the Tenant relating to the use of the Adjoining Property [provided that:

#### such regulations shall not materially interfere with the Tenant's use of the Property for the Permitted Use and the Tenant's exercise of the Rights; and

#### if there is any conflict between such regulations and the terms of this Lease, the terms of this Lease shall prevail].

### Where fuel, waste or other Hazardous Substances are kept on the Property, to do so in compliance with all relevant statutory and other requirements (including the requirements of the insurers of the Property notified to the Tenant from time to time) and in accordance with any other reasonable safeguards, rules or regulations for the Building imposed by the Landlord and notified to the Tenant from time to time [provided that (save in respect of the Landlord’s reasonable health and safety requirements) the Landlord will pay to the Tenant a sum or sums equivalent to any reasonable and proper increase in the costs incurred by the Tenant in complying with its obligations in this Lease or the [Concession Agreement] arising from such safeguards, rules or regulations for the Building imposed by the Landlord];

## Alienation[[7]](#footnote-7)

Not to:

### assign, underlet, charge, hold on trust, part with or share possession or occupation of the whole or any part of the Property nor agree to do so [except for an assignment of this Lease as a whole to a person to whom the Tenant's interest in the [Concession Agreement] is lawfully assigned and contemporaneously therewith]; and

### [(in addition to any restrictions on the assignment, novation or transfer of the [Concession Agreement] contained in the [Concession Agreement)]] assign, novate or otherwise transfer the [Concession Agreement] to anyone who does not simultaneously accept an assignment of this Lease.

## Costs of licences and notices as to breach of covenant

To pay within seven days of demand and indemnify the Landlord against:

### all reasonable costs charges and expenses (including professional fees) properly incurred by the Landlord arising out of or incidental to any application made by the Tenant for any consent or approval of the Landlord; and

### all costs charges and expenses (including professional fees (and for the avoidance of doubt the costs of any environmental reports or audits)) properly incurred by the Landlord arising out of or incidental to any breach of the Tenant's covenants or the preparation and service of a schedule or interim schedule of dilapidations or any notice which the Landlord may serve on the Tenant whether served before or after the determination of this lease (including a notice under section 146 of the Law of Property Act 1925) requiring the Tenant to remedy any breach of any of its covenants or arising out of or in connection with any proceedings referred to in section 146 or 147 of that Act or the Law of Property (Repairs) Act 1983, notwithstanding that forfeiture may be avoided otherwise than by relief granted by the court.

## Indemnity

To be responsible for and to indemnify the Landlord against:

### all damage, loss or injury occasioned to the Property, or any parts of the Adjoining Property or to any Conducting Media or to any person or chattel (whether or not upon the Property) caused by any default or negligence of the Tenant or the servants, agents, licensees or invitees of the Tenant or by reason of any defect in the Energy System; and

### all losses, damages, costs, expenses, claims and proceedings incurred by or made against the Landlord arising out of any breach by the Tenant of any of its obligations arising by virtue of this Lease;

provided that the Landlord shall be obliged to use reasonable endeavours to mitigate any costs.

## Notices

### To supply the Landlord with a copy of any notice, order or certificate or proposal for any notice, order or certificate affecting or capable of affecting the Property as soon as it is received by or comes to the notice of the Tenant; and

### At the request and cost of the Landlord, to make or join the Landlord in making such objections or representations against or in respect of any such notice, order or certificate as the Landlord may reasonably require.

## Value added tax

To pay to the Landlord within seven days of demand any value added tax chargeable upon:

### any supply made by the Landlord to the Tenant pursuant to this lease so that all consideration for any such supply is exclusive of value added tax and the Landlord will provide the Tenant with a valid value added tax invoice addressed to the Tenant; and

### any supply (whether made to the Landlord or to a third person) where pursuant to this lease the Tenant is required to pay to the Landlord any sum in respect of any costs, fees, expenses or other expenditure or liability (of whatever nature) in connection with that supply except to the extent that any such value added tax may be recoverable by the Landlord from HM Revenue & Customs.

## [Documents affecting title

To perform and observe the provisions of the documents or the other matters referred to in the Third Schedule so far as they affect or relate to the Property][[8]](#footnote-8).

## Entry by Landlord

### Subject to clause 5.8 (*Costs of Supervision*) and Part 2 of the **Second Schedule**, to permit the Landlord at all reasonable times and on reasonable notice (except in emergency) to enter the Property in order to:

### inspect and record the condition of the Property or any other parts of the Building or the Adjoining Property;

### remedy any breach of the Tenant's obligations under this Lease which the Tenant has failed after reasonable notice to remedy;

### inspect, repair, maintain, clean, alter, replace, install, add to or connect up to any Conducting Media which serve the Property, the Building or the Adjoining Property;

### repair, maintain, alter or rebuild any part of the Building or the Adjoining Property; and

### comply with any of its obligations under this Lease or the Superior Lease.

## Superior Lease

### Not to breach any covenant or provision contained in the Superior Lease; and

### Not to do anything which might cause the Superior Lease to be forfeited.

# Landlord’s Covenants

The Landlord covenants with the Tenant while the reversion immediately expectant on the Term is vested in it as follows:

## Peaceful enjoyment

The Landlord covenants with the Tenant that the Tenant performing and observing the covenants, conditions and agreements contained in this lease shall and may peaceably and quietly hold and enjoy the Property during the Term without any lawful interruption or disturbance by the Landlord or any person rightfully claiming through or under it.

## Restrictions on use by the Landlord

The Landlord shall not in respect of the Adjoining Property

### erect, construct or place any new building or structure or carry out any excavation which is reasonably likely to materially adversely affect the Heat Distribution Network [and the Electricity Network] (as constructed from time to time) within the Easement Corridor without the previous consent in writing of the Tenant (not to be unreasonably withheld or delayed) provided always that it is agreed that consent shall not be required and the Landlord shall not be prevented from building, retaining, laying or re-laying (as the case may be) car parking, roads, kerbs, footpaths, landscaping or other appropriate surfaces on any part of the Easement Corridor;

### following the tree planting by or on behalf of the Landlord in accordance with its planning obligations, plant any further trees whose roots are reasonably likely to materially adversely affect the Heat Distribution Network [and the Electricity Network] (as constructed from time to time) within the Easement Corridor without the previous written consent of the Tenant (not to be unreasonably withheld or delayed);

### materially raise or lower or suffer to be materially raised or lowered the existing level of the surface of the Easement Corridor (other than by subsidence, heave or other natural cause) without the previous consent in writing of the Tenant (not to be unreasonably withheld or delayed) provided that nothing in this clause shall prevent the building, retaining, laying or re-laying (as the case may be) of car parking, roads, kerbs, footpaths, landscaping or other appropriate surfaces on any part of the Adjoining Property as forms the site of an intended or existing road or footpath or other way or carrying on normal acts of good husbandry; and

### undermine or damage the Heat Distribution Network [and the Electricity Network] or do anything which may interfere with the free flow and passage through the Heat Distribution Network [and the Electricity Network] provided that the Landlord shall not be responsible for any such matters where they result from subsidence, heave or other natural causes or actions of third parties not under the control of the Landlord.

## Repairs

Subject to the Tenant paying the Service Charge in the manner specified in this Lease, the Landlord shall repair and maintain the Retained Property so far as necessary to enable the use of the Property for the Permitted Use and the exercise of the rights granted to the Tenant as set out in Part 1 of the **Second Schedule**, provided that the Landlord shall not be in breach of this clause as result of any failure;

### resulting from circumstances beyond the Landlord’s reasonable control, so long as the Landlord uses its reasonable endeavours to remedy the same as soon as reasonably practicable after becoming aware of such circumstances; or

### to the extent that such maintenance cannot reasonably be provided as a result of works of inspection, maintenance and repair or other works being carried out which are required to be undertaken in order to maintain in the said state of repair and condition, provided that the Landlord will use reasonable endeavours to ensure that such works will be carried out so as to minimise (as far as reasonably practicable) the period during which the Landlord is unable to comply with its repair covenants.

## [Access

The Landlord shall maintain the Access and any other access routes used by the Tenant to a standard sufficient to permit the full exercise of the Tenant’s rights under Part 1 of the **Second Schedule**, provided that the Landlord may, at its discretion, change the route of any means of access to or egress from the Property through the Common Parts and/or the Estate Common Areas (as relevant) so long as a means of access and egress is maintained at all times, save in case of an emergency][[9]](#footnote-9).

## [Planning Agreements

### At the reasonable cost of the Tenant the Landlord shall:

#### enter into such Planning Agreements as the Tenant may require (such Planning Agreements to be in a form acceptable to the Landlord, acting reasonably); and

#### provide all such information and support in relation to any planning application lawfully submitted by the Tenant as the Tenant may require.][[10]](#footnote-10)

## Indemnity

To be responsible for and to indemnify the Tenant against:

### all damage, loss or injury occasioned to the Energy System caused by any act, default or negligence of the Landlord or the servants, agents, licensees or invitees of the Landlord; and

### all losses, damages, costs, expenses, claims and proceedings incurred by or made against the Tenant arising out of any breach by the Landlord of any of its obligations arising by virtue of this Lease;

### provided that the Tenant shall be obliged to use reasonable endeavours to mitigate any costs.

## Payment of rates

To pay and indemnify the Tenant against all existing and future rates or other outgoings whatsoever imposed or charged upon the Retained Property.

## Costs of supervision

The Landlord shall pay to the Tenant the reasonable and proper costs incurred by the Tenant in providing supervision for any entry to the Property by the Landlord and/or Superior Landlord where such supervision is required for more than three hours on each occasion or where supervision is required more than [twenty four (24)] times in any [twelve (12)] month period]ns (except where such entry is as a result of the Tenant's default).

## Assignment of reversion[[11]](#footnote-11)

### Subject to clause 5.9.2, the Landlord shall:

#### not assign or otherwise transfer or dispose of its reversionary interest in this Lease to anyone who does not simultaneously take an assignment, transfer or disposition of the Landlord's interest in the [Concession Agreement] without the prior written consent of the Tenant, such consent not to be unreasonably withheld or delayed provided that it shall be reasonable for the Tenant to withhold consent where there would be a material adverse impact on the [Concession Agreement] until such time as any amendments reasonably required by the Tenant have been made to this Lease or the [Concession Agreement] or both as appropriate; and

#### except as permitted by clause 5.9.1(a) assign or otherwise transfer or dispose of its reversionary interest in this Lease to anyone who takes an assignment, transfer or disposition of the Landlord's interest in the [Concession Agreement];

### The Landlord shall be entitled without the consent of the Tenant to grant an overriding lease of its reversionary interest in this Lease provided that upon such grant the Landlord is immediately granted a leaseback of the Property such that it remains entitled to the reversion immediately expectant on the termination of this Lease.

## Superior Lease

### To pay the rents reserved by the Superior Lease;

### To perform and observe the lessee’s covenants in the Superior Lease, except in so far as they relate to the Property and are stated to be the responsibility of the Tenant in this Lease;

### At the written request and cost of the Tenant to take all reasonable steps to enforce the covenants of the Superior Landlord in the Superior Lease; and

### At the written request and cost of the Tenant to take all reasonable steps to obtain the consent of the Superior Landlord if required by the terms of the Superior Lease.

# Insurance

## Landlord’s insurance covenants

The Landlord covenants with the Tenant while the reversion immediately expectant on the Term is vested in it as follows:

### To insure or procure the insurance of the Building (other than the Energy System) unless the insurance is invalidated in whole or in part by any act or default of the Tenant:

#### with an insurance office or underwriters of repute;

#### against loss or damage by the Insured Risks;

#### subject to such excesses as may be imposed by the insurers;

#### in the full cost of reinstatement of the Property and the Building (in modern form if appropriate) including shoring up, demolition and site clearance, professional fees, VAT and allowance for building cost increases;

### At the request and cost of the Tenant, to produce evidence of the terms of the insurance under this clause 6.1 and of payment of the current premium;

### If any part of the Building is destroyed or damaged by an Insured Risk, then, unless payment of the insurance moneys is refused in whole or part because of the act or default of the Tenant, and subject to obtaining all necessary planning and other consents, to use the insurance proceeds (except those relating to loss of rent and fees) in reinstating the same (other than the Energy System) as quickly as reasonably practicable, in modern form if appropriate but not necessarily identical in layout and (in relation to the Property) substantially as they were before the destruction or damage;

### The Landlord shall use its reasonable endeavours to procure that the interest of the Tenant is noted or endorsed on the policy whenever this is permitted under the policy; and

### If the Property or any part of the Building are destroyed or damaged by any of the Insured Risks so that they or any part or parts of them are incapable of operating, are unfit for occupation and use or inaccessible and provided that the insurance effected by the Landlord is not invalidated or payment of the policy monies refused in whole or in part due to an act or default of the Tenant, then the performance of the Tenant's covenants contained in this Lease will be suspended from the date of the damage or destruction until the Property is again capable of operation and fit for occupation and use.

## Tenant’s insurance covenants[[12]](#footnote-12)

The Tenant covenants with the Landlord throughout the Term or until released pursuant to the 1995 Act as follows:

### To give the Landlord immediate written notice on becoming aware of any event or circumstance which might affect or lead to an insurance claim;

### Not to do anything at the Property which would or might prejudice or invalidate the insurance of the Building or the Adjoining Property or cause any premium for their insurance to be increased;

### To pay to the Landlord within [seven (7)] days of demand:

#### any increased premium and any Costs incurred by the Landlord as a result of a breach of clause 6.2.2;

#### the whole of the irrecoverable proportion of the insurance moneys if the Property or the Building or any part is destroyed or damaged by an Insured Risk but the insurance moneys are irrecoverable in whole or part due to the act or default of the Tenant; and

### To comply with the requirements and reasonable recommendations of the insurers insofar as they have been notified to the Tenant.

# Equipment

## [Ownership of Equipment[[13]](#footnote-13)

The Landlord acknowledges that:

### nothing in this Lease shall be deemed to confer upon the Landlord or any other party any proprietary interest or ownership in the Energy System;

### all parts of the Energy System are the property of the Tenant and any part of the Energy System installed within or on or in the Property pursuant to the rights in this Lease are Tenant’s fixtures and belongs to the Tenant; and

### the ability to claim capital allowances in respect of all parts of the Energy System is reserved to the Tenant**].**

# contracting out

## The parties agree and declare that:

### a notice in the form or substantially the form set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 with a copy of the agreed form of this lease attached to it was served by the Landlord on the Tenant on [                                         ] and a statutory declaration in the form or substantially the form set out in paragraph 8 of Schedule 2 of that Order was made [by the Tenant] [NAME OF DECLARANT], whom the Tenant confirms was duly authorised by the Tenant to make the statutory declaration on its behalf] on [                                         ]; and

### the provisions of sections 24–28 (inclusive) of the Landlord and Tenant Act 1954 shall not apply to the tenancy created by this deed.

# Termination and expiry[[14]](#footnote-14)

Upon expiry or earlier termination (howsoever) of the [Concession Agreement], the Term shall automatically terminate with immediate effect but without prejudice to any claim in respect of any prior breach of the obligations contained in this Lease.

# Limitation on liability

The liability of the parties to this Lease shall be governed in accordance with clause [ ] of the [Concession Agreement].

# General

## Force Majeure

The provisions of clause [ ] of the [Concession Agreement] shall apply mutatis mutandis to the obligations of the parties under this Lease.

## Environmental Liability

The liability of the parties for all environmental matters shall be governed in accordance with clause [ ] of the [Concession Agreement].

## No Compensation

Any right for the Tenant to claim compensation from the Landlord on vacating the Property or otherwise is excluded to the extent permitted by law.

## No implied Easements

The grant of this Lease does not confer any rights over the Building or the Adjoining Property or any other property except those mentioned in Part 1 of the **Second Schedule**, and Section 62 of the Law of Property Act 1925 is excluded from this Lease, nor shall this Lease impose any restriction on the use of any property not comprised in this Lease.

## Common Parts and Estate Common Areas

The Landlord acting reasonably may from time to time change the location, area or arrangements for use by the Tenant of any part of the Common Parts, Estate Common Areas or Conducting Media so long as the same does not materially adversely affect the reasonable use and enjoyment of the Property or the rights enjoyed under this Lease.

## Dispute Resolution

Any dispute under this Lease shall be referred to dispute resolution in accordance with clause [ ] of the [Concession Agreement].

## Notices

All notices served under this Lease shall be served in accordance with clause [ ] of the [Concession Agreement].

## Severance

### If any provision or part-provision of this Lease 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 Lease.

### If any provision or part-provision of this Lease is deemed deleted under clause 11.8.1 (Deletion of invalid, illegal or unenforceable provision) 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.

## 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 Lease.

## Contracts (Rights of Third Parties) Act 1999

### This Lease does not give rise to any rights under the Contracts (Rights of Third parties) Act 1999 to enforce any terms of this agreement.

### [The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.]

## Law and jurisdiction

### 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.

### 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.

In witness of which this Lease has been executed and is delivered as a deed on the date appearing as the date of this Lease.

Executed as a deed by [LANDLORD] acting by [a director and its secretary] [two directors]:

*[Signature]*

Director

*[Signature]*

[Secretary] [Director]

Executed as a deed by [TENANT] acting by [a director and its secretary] [two directors]:

*[Signature]*

Director

*[Signature]*

[Secretary] [Director]

First Schedule   
  
The Property

The plant room of the Building (as defined in clause 1 and known [ ]) as is shown edged [ ] on Plan [ ] and each and every part thereof:

Including:

1. the floorboards, screed, plaster and other finishes on the floors, walls, columns and ceilings, and all carpets;
2. any raised floors and false ceilings (including light fittings), and the voids between the ceilings and false ceilings and the floor slab and the raised floors;
3. non-load-bearing walls and columns in the Property and one half of the thickness of such walls dividing the Property from other parts of the Building;
4. all doors and internal windows and their frames, glass and fitments;
5. all Conducting Media, plant and machinery within and solely serving the same;
6. all Landlord’s fixtures and fittings;
7. all alterations and additions;

But excluding:

1. all structural and external parts of the Building;
2. all Conducting Media, plant and machinery serving other parts of the Building;
3. the Energy System within the same[[15]](#footnote-15).

FIRST SCHEDULE

ANNEX 1: Plans

Second Schedule

Part 1   
  
**Easements and other rights granted**

The Property is demised together with the rights set out below for the benefit of the Tenant (in common with the Landlord and others authorised by the Landlord) and any other person using them with the express or implied authority of the Tenant including its employees, agents, workmen, undertenants and any other permitted occupier of the Property and any person under its or their control:

1. Subject to the Tenant paying the Service Charge, the right to use the relevant Estate Common Areas and Common Parts as the Landlord may designate for access to and from the Property and for the purposes of exercising the rights contained in this Part 1, subject to the reasonable rules and regulations made by the Landlord from time to time and notified to the Tenant and subject to the provisions of clause 4.9 (*Estate Regulations*).
2. Subject to the Tenant paying the Service Charge, the right to use all appropriate Estate Common Areas for all proper purposes for which such areas are intended to be used, subject to the reasonable rules and regulations made by the Landlord together or separately from time to time and notified to the Tenant and subject to the provisions of clause 4.9 (*Estate Regulations*).
3. Subject to the terms of the [Concession Agreement], first obtaining all necessary statutory consents and only ever in accordance with the [Concession Agreement], the right to construct, install, lay or erect and thereafter maintain, operate, repair and use the relevant parts of the Heat Distribution Network [and Electricity Network] on, under, over or through the Easement Corridor and such parts of the Building within which the Property or the Heat Distribution Network [and Electricity Network] is situated as may be required to connect the Property to the Easement Corridor and the Heat Distribution Network [and Electricity Network] to any part of the Estate;
4. Subject to the terms of the [Concession Agreement], first obtaining all necessary statutory consents and only ever in accordance with the [Concession Agreement], the right to alter, remove, renew and replace the relevant parts of the Heat Distribution Network [and the Electricity Network] on, under, over or through the Easement Corridor upon reasonable notice (save in the case of emergency);
5. Subject to the terms of the [Concession Agreement], to first obtaining all necessary statutory consents and only ever in accordance with the [Concession Agreement], the right to erect signs within the Estate if and to the extent required by any applicable legislation, planning consent or planning agreement with the Landlord's consent (not to be unreasonably withheld) and to erect a sign on the Property displaying the Tenant's corporate logo, site name and emergency number;
6. Where practicable and subject to the prior written approval of the Landlord (who may impose such reasonable rules and regulations as they deem fit in relation thereto) the right to park up to 2 motor cars or vans on so much land within the Adjoining Property as is reasonably necessary near to the Property and the Easement Corridor to facilitate all permitted construction, maintenance, repair, renewal, removal and replacement and performance of the Tenant's obligations in the [Concession Agreement];
7. Subject to the prior consent of the Landlord, such consent not to be unreasonably withheld or delayed, the right to fell, lop or cut from time to time all trees, branches and hedges growing on the Estate which if not felled, lopped or cut would obstruct or interfere with the Energy System or the exercise of the rights granted to the Tenant. Any timber so felled, lopped or cut will be the property of the Landlord and must be removed or disposed of as the Landlord may reasonably direct;
8. Subject to the Landlord's prior written consent (not to be unreasonably withheld or delayed) so far as reasonably necessary and available, the right to use parts of the Estate which are within the Landlord's control and open and unbuilt upon for the purposes of construction laydown during any period of construction, maintenance, repair or decommissioning provided that it shall be reasonable for the Landlord to require as a condition of giving consent that the Tenant enter into a licence agreement with the Landlord in a form and upon such reasonable terms as the Landlord may require;
9. Free and uninterrupted use of all existing and future Conducting Media which are in the Building or the Adjoining Property and which solely serve the Property, subject always to the Tenant not overloading them;
10. Subject to the prior written approval of the Landlord (not to be unreasonably withheld or delayed) and only ever in accordance with the [Concession Agreement], the right to enter (with or without vehicles) the Building and the Adjoining Property in order to inspect, repair, maintain, clean, alter, replace, install, add to or connect to any Conducting Media in the Building and the Adjoining Property which solely serve the Property (or, in the case of the Heat Distribution Network, [and the Electricity Network] whether or not it solely serves the Property).
11. The right to enter (with or without vehicles) the Building or the Adjoining Property:
12. to inspect, decorate, repair, replace, maintain, alter, demolish, redevelop or rebuild the Property or any part thereof;
13. in exercise of any right or obligation under this Lease.
14. The right of support and protection for the Property from the Building and the Adjoining Property.
15. All rights of entry onto the Building, Estate and the Adjoining Property are subject to the following conditions:
16. if required by the Landlord or (where applicable), or the Superior Landlord such entry shall (save in emergency) be under the reasonable supervision of the Landlord, or the Superior Landlord (where applicable);
17. (save in respect of the right contained in paragraph 1 of this Part 1 of the **Second Schedule**) entry shall only be effected at all reasonable times on reasonable prior written notice (except in emergency);
18. as little inconvenience and disturbance as reasonably practicable shall be caused to the Landlord or (where applicable) the Superior Landlord, and the tenants and occupiers from time to time of the Building, Estate or the Adjoining Property in the exercise of such rights;
19. all damage caused to the Building or the Adjoining Property by such entry shall be made good promptly to the Landlord’s and (where applicable) the Superior Landlord’s reasonable satisfaction;
20. such entry shall be subject to any other reasonable safeguards for the Building, Estate or the Adjoining Property and its tenants and occupiers as shall be required by the Landlord, and (where applicable) the Superior Landlord; and
21. such entry shall be exercised in a reasonable and proper manner and only to the extent that the purpose of entry cannot be reasonably conveniently or reasonably economically achieved otherwise than pursuant to entry upon the necessary part of the Building or the Adjoining Property.
22. The rights hereby granted may be varied by the Landlord on reasonable prior written notice to the Tenant where it is reasonable to do so in connection with any redevelopment of the Building, the Estate or the Adjoining Property and where reasonable alternative and commodious rights are granted in their place.

Part 2   
  
**The exceptions and rights reserved to the Landlord and other Authorised Persons**

There are excepted and reserved to the Landlord:

1. Free and uninterrupted use of all existing and future Conducting Media which are in the Property and solely serve the Building or the Adjoining Property or both.
2. The right to carry out any building, rebuilding, redevelopment, alteration or other works to the Building or the Adjoining Property (including the erection of scaffolding and crane oversailing) notwithstanding interference with light and air enjoyed by the Property.
3. Rights of entry on the Property as referred to in clause 4.26
4. The right for the foundations of any part of the Building or the Adjoining Property or both (which at the date of this Lease have been constructed) which are constructed under the Property to be retained in such positions together also with the right to enter such parts of the Property as is reasonably necessary in order to construct, repair and maintain such foundations PROVIDED THAT on any redevelopment of the Building or the Adjoining Property or both the Landlord shall have a right to enter such parts of the Property as is reasonably necessary in order to alter or rebuild such foundations, such foundations so altered or rebuilt not encroaching any further under the Property than as at the date of this Lease.
5. The right of support and protection for the Building and the Adjoining Property from the Property.
6. The right to lay, construct, repair, renew or inspect new or existing Conducting Media, pipes or other building services or appurtenances to any part of the Estate provided that such do not connect into or materially adversely interfere with the Energy System;
7. All rights of entry onto the Property are subject to the following conditions:
8. if required by the Tenant such entry shall (save in emergency) be under the reasonable supervision of the Tenant;
9. entry shall only be effected at all reasonable times on reasonable prior written notice (except in emergency);
10. as little inconvenience and disturbance as reasonably practicable shall be caused to the Tenant and the tenants and occupiers from time to time of the Property in the exercise of such rights;
11. all damage caused to the Property by such entry shall be made good promptly to the Tenant’s reasonable satisfaction;
12. such entry shall be subject to any other reasonable safeguards for the Property and its tenants and occupiers as shall be required by the Tenant; and
13. such entry shall be exercised in a reasonable and proper manner and only to the extent that the purpose of entry cannot be reasonably conveniently or reasonably economically achieved otherwise than pursuant to entry upon the necessary part of the Property.

Part 3   
  
**Superior Lease**

| **Date** | **Parties** | **Property** | **Term** |
| --- | --- | --- | --- |
| [●] | (1) [ ]  (2) [ ] | [ ] | [ ] years from and including [●] to and including [●] |

Third Schedule  
  
Documents and matters affecting title

1. The covenants, matters and stipulations set out or referred to in or contained or referred to in the matters and documents referred to in the Property and Charges Registers of the Landlord’s title number [                         ] so far as the same affect or relate to the Property and are capable of being enforced.
2. [                                                                  ].
3. [                                                                  ].

FOURTH SCHEDULE  
  
Service Charge

*[Drafting Note: In some cases, no services charges are payable by tenants].*

1. In this Schedule:
   1. **Review Date** means each anniversary of the grant of this Lease and **Relevant Review Date** shall be interpreted accordingly;
   2. **Index** means the All Items Retail Prices Index published by the Office of National Statistics (or its successor as publisher of the said Index) or if publication of the said Index ceases the nearest equivalent official index as agreed in writing between the Landlord and the Tenant or determined by arbitration in accordance with Paragraph 3 of this Schedule on the application of either Landlord or Tenant made no earlier than one month after the Index ceases to be published.

If the reference base used to compile the Index changes the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the reference base current at the date of this Lease had been retained;

* 1. the “**Review Date Index Figure**” means the index figure of the Index as last published at least two months before the Relevant Review Date;
  2. the “**Base Index Figure**” means:
     1. (in the case of the first review under this Lease) the index figure of the Index as last published at least two months before the date of this Lease; and
     2. (in the case of all subsequent reviews) the index figure of the Index as last published at least two months before the last preceding Review Date under this Lease;
  3. **Revised Service Charge** means the Service Charge payable immediately before the Relevant Review Date (disregarding any suspension or abatement of the Service Charge) multiplied by the Review Date Index Figure and divided by the Base Index Figure**.**

1. The Service Charge shall be reviewed on each Review Date to the higher of:
   1. the Service Charge payable immediately before the Relevant Review Date (disregarding any suspension or abatement of the Service Charge); and
   2. the Revised Service Charge on the Relevant Review Date agreed or determined in accordance with this Lease.
2. Any dispute as to the identity of the Index shall be determined by arbitration by a single chartered accountant agreed between the Landlord and the Tenant or in the absence of agreement nominated on the application of either party by the President for the time being of the Institute of Chartered Accountants and otherwise in accordance with clause 11.6.
3. If at any Relevant Review Date the operation of these review provisions in this Lease, or the normal collection and retention by the Landlord of any increase in the Service Charge is prohibited or modified, the Landlord may elect at any time that the day after the date on which any such prohibition or modification is relaxed shall be substituted for the Relevant Review Date.
4. Time shall not be of the essence for the purposes of this Schedule.

1. Note: As general rights of access (including a licence during the construction period) tend to be granted under the Concession Agreement, inclusion of additional rights of access under the Lease may not be necessary. Consider on a case by case basis. [↑](#footnote-ref-1)
2. Note: Plan to be finalised based on the as-built position at the time the lease is granted. The Building will house the plant room which is the subject of this lease. Note that in many cases the Energy Centre will be a standalone Building, built solely to house the energy plant and equipment, in which case appropriate tailoring of this Lease will be needed (for example to the definition of “Common Parts”. [↑](#footnote-ref-2)
3. Amend as appropriate to the extent that “governing” agreement in relation to the delivery of heat to the Estate is not a Concession Agreement. [↑](#footnote-ref-3)
4. *Note: Plan to be finalised based on the as-built position at the time the lease is granted* [↑](#footnote-ref-4)
5. Note: Plan to be finalised based on the as-built position at the time the lease is granted [↑](#footnote-ref-5)
6. Note: a commercial decision regarding responsibility for Business Rates in connection with the Energy Plant and Equipment should be made at a Concession Agreement level. Reflect appropriately here. [↑](#footnote-ref-6)
7. Drafting note: it is assumed that the Concession Agreement and the Lease are stapled. [↑](#footnote-ref-7)
8. Note: Include to the extent that there are any documents affecting title with which the Tenant must comply [↑](#footnote-ref-8)
9. Drafting note: note, this may be covered under the licence granted under the Concession Agreement. [↑](#footnote-ref-9)
10. Note: This provision is only relevant to the extent that any planning permission for the Energy Plant and Equipment has not been obtained prior to entry into the Lease. [↑](#footnote-ref-10)
11. Note: it is assumed that the Lease will be stapled to the Concession Agreement [↑](#footnote-ref-11)
12. Note: the Tenant’s substantive insurance obligations will be set out under the Concession Agreement. [↑](#footnote-ref-12)
13. Note: drafting included to the extent that the Concession grants ESCO full ownership rights over the Energy System. Amend as appropriate, if ESCO only rents/ has a licence over/ rights to access (for operation and maintenance purposes). [↑](#footnote-ref-13)
14. Note: This Lease has been drafted on the basis that the Concession Agreement and the Lease are co-terminous. Therefore, there are no independent termination rights under this Lease. The Parties may agree that there are specific breaches of this Lease (or a persistent breach) which may become a termination right under the Concession Agreement. [↑](#footnote-ref-14)
15. Note: It is assumed for the purposes of this Lease that the Energy System is owned by ESCO tenant and not let as part of the Lease. Amend as appropriate if ESCO leases the Energy System. [↑](#footnote-ref-15)